STATEMENT OF DAVID P. SCHIPPERS, CHIEF INVESTIGATIVE COUNSEL

Mr. SCHIPPERS. Thank you, Mr. Chairman.

Mr. HYDE. Pull the microphone a little closer to you so we can hear you.

Mr. SCHIPPERS. Mr. Chairman, members, as the chief investigative counsel for the majority, I have been called upon to advise the Judiciary Committee of the results of our analysis and review of the September 9, 1998 referral from the Office of the Independent Counsel in which there was a conclusion that there is substantial and credible information that President William Jefferson Clinton committed acts that may constitute grounds for an impeachment.

Mr. HYDE. Mr. Schippers, would you pull the mike a little closer to you?

Mr. SCHIPPERS. How is that? Is that better?

Mr. HYDE. Much better.

Mr. SCHIPPERS. In executing the task assigned to us, my staff and I have made a deliberate effort to discount the political aspects of our examination and to ignore any partisan tactics and strategy.

The standard of review was set by me in our very first meeting after the delivery of the material. I reminded the staff that we are not advocates, that we are professionals asked to perform a professional, albeit distasteful, duty. Therefore, I asked them to review the referral and supporting data in the light most favorable to the President.

Throughout this effort, we have been determined to avoid even the suggestion of preference because we view our responsibility as requiring an unbiased, full and expeditious review, untrammeled by any preconceived notions or opinions. Our approach has been solely in keeping with constitutional and legal standards of fairness and impartiality.

Before moving on to the substantive areas of the report, I would like to address two elementary, but basic, concepts of our constitutional government. These will serve to put our conclusions in the proper perspective.

First: The President of the United States enjoys a singular and appropriately lofty position in our system of government. But that position by its very nature involves equally unique and onerous responsibilities, among which are included affirmative obligations that apply to no other citizen.

Specifically, the Constitution of the United States imposes upon the President the explicit and affirmative duty to take care that the laws be faithfully executed. Moreover, before entering upon the duties of his office, the President is constitutionally commanded to take the following oath:

I do solemnly swear or affirm that I will faithfully execute the Office of President of the United States and will, to the best of my ability, preserve, protect and defend the Constitution of the United States.

The President, then, is the chief law enforcement officer of the United States. Although he is neither above nor below the law, he is, by virtue of his office, held to a higher standard than any other American. Furthermore, as Chief Executive Officer and Commander in Chief, he is the repository of a special trust.

Second: Many defendants who face legal action, whether it be civil or criminal, can honestly believe that the case against them is unwarranted and factually deficient. It is not, however, in the discretion of the litigant to decide that any tactics are justified to defeat the lawsuit in that situation. Rather, it is incumbent upon that individual to testify fully and truthfully during the truth-seeking phase. It is then the function of our system of law to expose the frivolous cases. The litigant may not with impunity mislead, deceive or lie under oath in order to prevail in the lawsuit or for other personal gain. Any other result would be subversive of the American rule of law.

The principle that every witness in every case must tell the truth, the whole truth and nothing but the truth, is the foundation of the American system of justice which is the envy of every civilized nation. The sanctity of the oath taken by a witness is the most essential bulwark of the truth-seeking function of a trial, which is the American method of ascertaining the facts. If lying under oath is tolerated and, when exposed, is not visited with immediate and substantial adverse consequences, the integrity of this country's entire judicial process is fatally compromised, and that process will inevitably collapse. The subject matter of the underlying case, whether civil or criminal, and the circumstances under which the testimony is given, are of no significance whatever. It is the oath itself that is sacred and must be enforced.

The Independent Counsel Act provides in relevant part that an independent counsel shall advise the House of Representatives of any substantial and credible information . . . that may constitute grounds for an impeachment.

In compliance with the statutory mandate, the Office of the Independent Counsel, Kenneth Starr, informed the House of Representatives on September 9, 1998, that it was prepared to submit a referral under that statute. On that day, the Independent Counsel's Office delivered to the House the following material:

A. A referral consisting of an Introduction, a Narrative of Relevant Events and an Identification and Analysis of the Substantial and Credible Information that may support grounds for impeachment of William Jefferson Clinton;

B. An appendix in six three-ring binders totaling in excess of 2,500 pages of the most relevant testimony and other material cited in the referral; and

C. Seventeen transmittal boxes containing grand jury transcripts, deposition transcripts, FBI reports, reports of interviews, and thousands of pages of incidental back-up documents.

Pursuant to House Resolution 525, all of this material was turned over to the Committee on the Judiciary to be held in executive session until September 28, 1998; and at that time the House ordered that all the materials be released to the public, except those which were withheld by action of the committee.

My staff and the minority staff were then instructed by the committee to review the referral, together with all of the other evidence and testimony that had been submitted, for the purpose of determining whether there actually existed substantial and credible evidence that President William Jefferson Clinton may have commit-

ted acts that may constitute grounds to proceed to a resolution for an impeachment inquiry.

Because of the narrow scope of our directive, the investigation and analysis was necessarily circumscribed by the information delivered with the referral. We also considered some information and analysis that was furnished by the counsel for the President. For that reason, we did not seek to procure any additional evidence or testimony from any other source. Particularly, we did not seek to obtain or review the material that remained in the possession of the Office of Independent Counsel. In two telephone conversations with Mr. Bittman, Mr. Lowell and I were assured that the retained material was deemed unnecessary to comply with the statutory requirement under Section 595(c). Though Mr. Bittman offered to make available to both counsel all of the material, my staff and I did not deem it necessary, for that matter, even proper, to go beyond the submission itself. At the suggestion of the minority counsel, the retained material was later reviewed by members of both staffs. The material was, as anticipated, irrelevant.

To support the referral, the House has been furnished with grand jury transcripts, FBI interview memoranda, transcripts of depositions, other interview memoranda, statements, audio recordings and, where available, video recordings of all persons named in the referral. In addition, the House was provided with a copy of every document cited and a mass of documentary and other evidence produced by witnesses, the White House, the President, the Secret Service, and the Department of Defense.

This report is confined solely to that referral and supporting evidence and the testimony supplied to the House and then to this committee, supplemented only by the information provided by the President's counsel. Although the original submission contained a transcript of the President's deposition testimony, no videotape was included. Pursuant to a request by Chairman Hyde, a videotape of the entire deposition was later provided to the committee by the District judge. Both that video and the video of the President's testimony before the grand jury have been thoroughly reviewed by all members of my staff and by me personally.

Apart from the thorough review of President Clinton's deposition and grand jury testimony, the following functions were also performed in preparation for this report:

1. All grand jury transcripts and memoranda of interview of Ms. Currie, Mr. Jordan, Ms. Lewinsky, the Secret Service agents and Ms. Tripp were independently reviewed, compared and analyzed by at least three members of my staff and those of Ms. Currie, Mr. Jordan, Ms. Lewinsky, Ms. Tripp and both appearances of the President by me personally.

2. All of the remaining grand jury transcripts, deposition transcripts and memoranda of the others interviewed were likewise reviewed, compared and analyzed. This involved more than 250 separate documents, some consisting of hundreds of pages. In this regard, my staff was instructed to seek any information that might cast doubt upon the legal or factual conclusions of the Independent Counsel.

3. The entire appendix, consisting of in excess of 2,000 pages, was systematically reviewed and analyzed against the statements contained in the referral.

4. I personally read the entire evidence reference and legal reference that accompanied the referral. I analyzed the legal precepts and theories and read at least the relevant portions of every case cited.

5. In addition to other members of the staff, I personally read and analyzed the 11 specific allegations made by the Independent Counsel, and I also reviewed the evidentiary basis for those allegations. Each footnote supporting the charges was checked to insure that it did, in fact, support the underlying evidentiary proposition. In cases where inferences were drawn in the body of the referral, the validity of those inferences was tested under acceptable principles of Federal trial practice.

6. Each of the literally thousands of back-up documents was reviewed in order to insure that no relevant evidence had been overlooked.

7. Meetings of the entire staff were held virtually on a daily basis for the purpose of coordinating our efforts and to synthesize the divergent material into a coherent report.

Having completed all of those tasks assigned to us, we are now prepared to report our findings to you, the members of this committee. We are fully aware that the purpose of this hearing is solely for the committee to decide whether there is sufficient, credible and substantial evidence to proceed to an impeachment inquiry. This and nothing more. Of course, as members of this committee, you and only you are authorized and encouraged eventually to make your own independent judgment on what constitutes impeachable offenses and the standards of proof that might be applicable. My report, then, represents only a distillation and consensus of the staff's efforts and conclusions for your guidance and consideration.

At the outset, one point needs to be made. The witness Monica Lewinsky's credibility may be subject to some skepticism. At an appropriate stage of the proceedings, that credibility will, of necessity, be assessed, together with the credibility of all other witnesses in the light of all the other evidence. Ms. Lewinsky admitted to having lied on occasion to Ms. Tripp, and she also admitted to having executed and caused to be filed a false affidavit in the *Paula Jones* case.

On the other hand, Ms. Lewinsky obtained a grant of immunity for her testimony before the grand jury and, therefore, has no reason to lie thereafter. Furthermore, the witness' account of the relevant events could well have been much more damaging. For the most part, though, the record reflects that she was an embarrassed and reluctant witness, who actually downplayed her White House encounters. In testifying, Ms. Lewinsky demonstrated a remarkable memory, supported by her personal diary, concerning dates and events. Finally, the record includes ample corroboration of her testimony by independent and disinterested witnesses, by documentary evidence and, in part, by the grand jury testimony of the President himself. Consequently, for the limited purpose of this report, we suggest that Monica Lewinsky's testimony is both substantial and credible.

It has been the considered judgment of my staff and myself that our main focus should be on those alleged acts and omissions by the President which affect the rule of law and the structure and integrity of our court system. Deplorable as the numerous sexual encounters related in the evidence may be, we chose to emphasize the consequences of those acts as they affect the administration of justice and the unique role the President occupies in carrying out his oath faithfully to execute the laws of the Nation.

The prurient aspect of the referral is, at best, merely peripheral to the central issues. The assertions of presidential misconduct cited in the referral, though arising initially out of sexual indiscretions, are completely distinct and involve allegations of an ongoing series of deliberate and direct assaults by Mr. Clinton upon the justice system of the United States and upon the judicial branch of our government which holds a place in the constitutional framework of checks and balances equal to that of the executive and the legislative branches.

As a result of our research and review of the referral and supporting documentation, we respectfully submit that there exists substantial and credible evidence of 15 separate events directly involving President William Jefferson Clinton that could—could—constitute felonies which, in turn, may constitute grounds to proceed with an impeachment inquiry.

I will now present the catalogue of those charges, together with a brief statement of the evidence supporting each.

Please understand that nothing contained in this report is intended to constitute an accusation against the President or anyone else, and it should not be construed as such by anyone. What follows is nothing more than a litany of the crimes that might have been committed based upon the substantial and credible evidence provided by the Independent Counsel and reviewed, tested and analyzed by my staff.

With that caution in mind, I will proceed:

First, there is substantial and credible evidence that the President may have been part of a conspiracy with Monica Lewinsky and others to obstruct justice and the due administration of justice by: (A) providing false and misleading testimony under oath in a civil deposition and before the grand jury; (B) withholding evidence and causing evidence to be withheld and concealed; and (C) tampering with prospective witnesses in a civil lawsuit and before a Federal grand jury.

The President and Ms. Lewinsky had developed a cover story to conceal their activities. On December 6, 1997, the President learned that Ms. Lewinsky's name had appeared on the *Jones* v. *Clinton* witness list. He informed Ms. Lewinsky of that fact on December 17, 1997, and the two agreed that they would employ the same cover story in the *Jones* case. The President at that time suggested that an affidavit might be enough to prevent Ms. Lewinsky from testifying. On December 19, 1997, Ms. Lewinsky was subpoenaed to give a deposition in the *Jones* case.

Thereafter, the record tends to establish that the following events took place:

1. In the second week of December, 1997, Ms. Lewinsky told Ms. Tripp that she would lie if called to testify and tried to convince Ms. Tripp to do the same.

2. Ms. Lewinsky attempted on several occasions to get Ms. Tripp to contact the White House before giving testimony in the *Jones* case.

3. Ms. Lewinsky participated in preparing a false and intentionally misleading affidavit to be filed in the *Jones* case.

4. Ms. Lewinsky provided a copy of the draft affidavit to a third party for approval and discussed changes calculated to mislead.

5. Ms. Lewinsky and the President talked by phone on January 6, 1998, and agreed that she would give false and misleading answers to questions about her job at the Pentagon.

6. On January 7, 1998, Ms. Lewinsky signed the false and misleading affidavit. The conspirators intended to use the affidavit to avoid Ms. Lewinsky's giving testimony.

7. After Ms. Lewinsky's name surfaced, the conspirators began to employ code names in their contacts.

8. On December 28, 1997, Ms. Lewinsky and the President met at the White House and discussed the subpoena she had received. Ms. Lewinsky suggested that she conceal the gifts that she had received from the President.

9. Shortly thereafter, the President's personal secretary, Betty Currie, picked up a box of the gifts from Ms. Lewinsky.

10. Betty Currie hid that box of gifts under her bed at home.

11. The President gave false and evasive answers to questions contained in interrogatories in the *Jones* case.

12. On December 31, 1997, Ms. Lewinsky, at the suggestion of a third party, deleted 50 draft notes that she had made up to the President. She had already been subpoenaed to testify in the *Jones* case.

13. On January 17, 1998, the President's attorney produced Ms. Lewinsky's false affidavit at the President's deposition, and the President adopted it as true.

14. On January 17, 1998, in his deposition, the President gave false and misleading testimony under oath concerning his relationship with Ms. Lewinsky, about the gifts she had given him, and several other matters.

15. The President, on January 18, 1998, and thereafter, coached his personal secretary, Betty Currie, to give a false and misleading account of the Lewinsky relationship if called to testify.

16. The President narrated elaborate detailed false accounts of his relationship with Monica Lewinsky to prospective witnesses with the intention that those false accounts would be repeated in testimony.

17. On August 17, 1998, the President gave false and misleading testimony under oath to a Federal grand jury on the following points: his relationship with Ms. Lewinsky; his testimony in the January 17, 1998, deposition; his conversations with various individuals; and his knowledge of Ms. Lewinsky's affidavit and its falsity.

At this point, I would like to illustrate some of the details concerning the events immediately before and after the President's deposition on January 17, 1998.

On January 7, 1998, Ms. Lewinsky signed the false affidavit, and it was furnished to Mr. Clinton's civil lawyer. The President reviewed it so he knew that she had denied categorically their relationship when the deposition began.

During the questioning, however, it became more and more apparent to the President that Ms. Jones' attorneys possessed a lot more specific details than the President had anticipated. When the President returned to the White House late on the afternoon of January 17th, the calls began.

After completing his deposition testimony on January 17, 1998, the President and Vernon Jordan exchanged three telephone calls. The President also called Betty Currie and asked her to meet with him in the Oval Office on the following day.

On Sunday, January 18th, at a little after 6 o'clock in the morning, the President learned of the existence of the Linda Tripp tapes through an article in the Drudge Report.

At 11:49 a.m., Vernon Jordan telephones the White House and, within 40 minutes, he meets White House counsel Bruce Lindsey for lunch.

At approximately 1 p.m., the President calls both Vernon Jordan and Betty Currie at their homes.

Between 2:15 and 2:55, the record shows that Vernon Jordan placed one call to the White House and one call to the President himself; and at 5 o'clock the President meets with Betty Currie. In that meeting, the President informs Ms. Currie that he had been questioned at his deposition about Monica Lewinsky.

During the next 3 hours and 16 minutes, Betty Currie places four pages to Monica Lewinsky's pager requesting that Monica call Kay, a previously agreed upon code name that was being used by Ms. Currie and Ms. Lewinsky.

At 10:09 p.m., Monica Lewinsky finally telephoned Betty Currie at home. She told Betty Currie that she was not in a position to be able to talk but that she would call back later.

At 11:02 p.m., the President telephoned Betty Currie at home as well.

That evening, Vernon Jordan called deputy White House counsel Cheryl Mills.

Although the following day, January 19, 1998, was a national holiday honoring Martin Luther King, Jr., the flurry of activity continued.

Between 7:02 and 8:33 a.m. Betty Currie places three pages to Monica Lewinsky instructing her to "please call Kay."

When Ms. Currie receives no response, she places another page 4 minutes later stating, "Please call Kay at home. It's a social call, thank you."

Four minutes after that page, Ms. Currie pages Monica again with a message, "Kay is at home. Please call."

Ms. Currie received no response to either of those pages or any of them.

Two minutes later, Betty Currie telephones the President from her home. Immediately following her phone call to the President, Ms. Currie places another page to Ms. Lewinsky telling her to please call Kate, re: family emergency.

At 8:50 a.m., 6 minutes later, the President calls Ms. Currie at home. Immediately after the phone call from the President, Ms. Currie once again pages Monica and states "Message from Kay. Please call. Have good news."

Six minutes after the President calls Ms. Currie at her home, he places a call to Vernon Jordan at his home.

During a 24-minute span, from 10:29 to 10:53 a.m., Vernon Jordan places five calls. Three of those calls are placed to the White House, one of which is to Deputy Assistant to the President Nancy Hernreich, and one to White House Chief of Staff, Erskine Bowles. Mr. Jordan also pages Monica Lewinsky instructing her to call him at his office. Mr. Jordan's final call in this time period is to Ms. Lewinsky's attorney, Frank Carter.

After Mr. Jordan concludes his call to Mr. Carter, he receives a phone call from the President.

Between 11:04 and 11:17 a.m., Vernon Jordan places two calls to Deputy White House Counsel Bruce Lindsey. Mr. Jordan again pages Monica Lewinsky with the message, "Please call Mr. Jordan."

At 12:31 p.m., Mr. Jordan uses his cellular phone to once again contact the White House.

At 1:45 p.m., the President telephones Betty Currie at home.

At 2:29 p.m., Vernon Jordan again telephones the White House from a cellular phone and then enters the White House 15 minutes later. Once at the White House, Mr. Jordan meets with President Clinton, Erskine Bowles, Bruce Lindsey, Cheryl Mills, White House Counsel Charles Ruff, Rahm Emanuel and others.

At 2:46 p.m., Frank Carter pages Monica Lewinsky and requests her to please call Frank Carter.

Beginning at 4:51 p.m., the next 1 hour and 4 minutes show Vernon Jordan placing 14 calls. Six of those calls are to Bruce Lindsey, three are to Frank Carter, two are to Cheryl Mills, one is to Charles Ruff, and two are to Betty Currie.

At 5:56 p.m., the President telephones Vernon Jordan at his office. Eight minutes later, Mr. Jordan telephones Betty Currie at her home. Finally, at 6:26 p.m., Vernon Jordan telephones presidential aid Steven Goodin.

Second, there is substantial and credible evidence that the President may have aided and abetted, counseled and procured Monica Lewinsky to file and cause to be filed a false affidavit in the case of *Jones* v. *Clinton.*

The record tends to establish the following:

In a telephone conversation with Ms. Lewinsky on December 17, 1997, the President told her that her name was on the witness list in the *Jones* case. The President then suggested that she might submit an affidavit to avoid testimony. Both the President and Ms. Lewinsky knew that that affidavit would need to be false in order to accomplish the result that they wanted.

In that conversation, the President also suggested "you know, you can always say you were coming to see Betty or that you were bringing me letters." Ms. Lewinsky knew exactly what he meant, because it was the same cover story that they had agreed upon earlier.

Thereafter, Ms. Lewinsky discussed the affidavit with and furnished a copy to a confidante of the President for approval. Ms. Lewinsky signed the false affidavit and caused her attorney to provide it to the President's lawyer for use in the *Jones* case.

Third, there is substantial and credible evidence that the President may have aided, abetted, counseled and procured Monica Lewinsky in obstruction of justice when she executed and caused to be filed a false affidavit in the case of *Jones* v. *Clinton* with knowledge of the pending proceedings and with the intent to influence, obstruct or impede that proceeding in the due administration of justice.

The record tends to establish that the President not only aided and abetted Monica Lewinsky in preparing, signing and causing to be filed a false affidavit, he also aided and abetted her in using that false affidavit to obstruct justice.

Both Ms. Lewinsky and the President knew that her false affidavit would be used to mislead the plaintiff's attorneys and the court. Specifically, they intended that the affidavit would be sufficient to avoid Ms. Lewinsky's being required to give a deposition in the *Jones* case. Moreover, it was the natural and probable effect of the false statement that it would interfere with the due administration of justice. If the court and the *Jones* attorneys were convinced by the affidavit, there would be no deposition, and Ms. Lewinsky and the plaintiff's attorneys—I am sorry, there would be no deposition of Ms. Lewinsky, and the plaintiff's attorneys would be denied the ability to learn about material facts and to decide whether to introduce those facts at any subsequent trial.

Mr. Clinton caused his attorney to employ the knowingly false affidavit not only to avoid Ms. Lewinsky's deposition but to preclude the attorneys from interrogating the President about the same subject.

Fourth, there is substantial and credible evidence that the President may have engaged in misprision of Monica Lewinsky's felonies of submitting a false affidavit and of obstructing the due administration of justice both by taking affirmative steps to conceal those felonies and by failing to disclose the felonies, though under a constitutional and statutory duty to do so.

The record tends to establish the following:

Monica Lewinsky admitted to the commission of two felonies: Signing a false affidavit under oath and endeavoring to obstruct justice by using the false affidavit to mislead the court and the lawyers in the *Jones* case so that she would not be deposed and required to give evidence concerning her activities with the President. In addition, the President was fully aware that those felonies had been committed when he gave his deposition on January 17, 1998.

Nonetheless, Mr. Clinton took affirmative steps to conceal these felonies, including allowing his attorney in his presence to use the affidavit and to suggest that it was true. More importantly, the President himself, while being questioned by his own counsel late in the deposition, referring to one of the clearly false paragraphs in Ms. Lewinsky's affidavit, stated, "that is absolutely true."

More importantly, again, the President is the chief law enforcement officer of the United States. He is under a constitutional duty

to take care that the laws be faithfully executed. When confronted with direct knowledge of the commission of a felony, he is required by his office, as is every other law enforcement officer, agent or attorney in the country, to bring to the attention of the appropriate authorities the fact of the felony and the identity of the perpetrator. If he did not do so, the President could be guilty of misprison of felony.

Fifth, there is substantial and credible evidence that the President may have testified falsely under oath in his deposition in *Jones* v. *Clinton* regarding his relationship with Monica Lewinsky.

The record tends to establish the following:

There are three instances where credible evidence exists that the President may have testified falsely about this relationship: One, when he denied a "sexual relationship" in sworn answers to interrogatories; two, when he denied having an "extramarital sexual affair" in his deposition; and, three, when he denied having "sexual relations" or "an affair" with Monica Lewinsky in his deposition.

When the President denied a sexual relationship, he was not bound by the definition that the court later provided. There is substantial evidence obtained from Ms. Lewinsky, the President's grand jury testimony, and DNA test results that Ms. Lewinsky performed sexual acts with the President on numerous occasions. Those terms, given their common meaning, could reasonably be construed to include oral sex. The President also denied having sexual relations with Ms. Lewinsky as the court had defined that term. In the context of the lawsuit and the wording of that definition, there is substantial evidence that the President's later explanation given to the grand jury is an afterthought and is unreasonably narrow under the circumstances. Consequently, there is substantial evidence that the President's denial under oath in his deposition of a sexual relationship, a sexual affair or sexual relations with Ms. Lewinsky was not true.

Six, there is substantial and credible evidence that the President may have given false testimony under oath before the Federal grand jury on August 17, 1998, concerning his relationship with Monica Lewinsky.

The record tends to establish the following:

During his grand jury testimony, the President admitted only to inappropriate intimate contact with Monica Lewinsky. He did not admit to any specific acts. He categorically denied ever touching Ms. Lewinsky on the breasts or genitalia for the purpose of giving her sexual gratification. There is, however, substantial contradictory evidence from Ms. Lewinsky. She testified at length and with specificity that the President kissed and fondled her breasts on numerous occasions during their encounters, and at times there was also direct genital contact. Moreover, her testimony is corroborated by several other friends.

The President described himself as a non-reciprocating recipient of Ms. Lewinsky's services. Therefore, he suggested that he did not engage in sexual relations within the definition given him at the *Jones* case deposition. He also testified that his interpretation of the word "cause" in the definition meant either the use of force or contact with the intent to arouse or gratify. The inference drawn by the Independent Counsel that the President's explanation was

merely an afterthought calculated to explain away testimony that had been proven false by Ms. Lewinsky's evidence appears credible under the circumstances.

Seven, there is substantial and credible evidence that the President may have given false testimony under oath in his deposition given in *Jones* v. *Clinton* regarding his statement that he could not recall being alone with Monica Lewinsky and regarding his minimizing the number of gifts that they had exchanged.

The record tends to establish the following:

President Clinton testified at his deposition that he had no specific recollection of being alone with Ms. Lewinsky in any room at the White House. There is ample evidence from other sources to the contrary. They include Betty Currie, Monica Lewinsky, several Secret Service agents and White House logs. Moreover, the President testified in the grand jury that he was alone with Ms. Lewinsky in 1996 and 1997 and that he had a specific recollection of certain instances when he was alone with her. He admitted to the grand jury that he was alone with her on December 28, 1997, 3 weeks prior to the date of his deposition.

The President was also asked at this deposition whether he had ever given any gifts to Ms. Lewinsky. He responded, "I don't recall." He then asked the *Jones* attorneys if they knew what they were. After the attorneys named specific gifts, the President remembered giving Ms. Lewinsky something from the Black Dog. That testimony, again, was given less than 3 weeks after Ms. Currie had picked up a box of the gifts that the President had given and hidden them under her bed.

In his grand jury testimony nearly 7 months later, he admitted giving Ms. Lewinsky Christmas gifts on December 28, 1997, and on other occasions. When confronted with his lack of memory at the deposition, the President responded that his statement "I don't recall" referred to the identity of specific gifts and not whether or not he actually recalled giving gifts.

The President also testified at his deposition that Ms. Lewinsky gave him gifts "once or twice." Ms. Lewinsky says that she gave a substantial number of gifts to the President. That is corroborated by gifts turned over by Ms. Lewinsky to the Independent Counsel and by a letter to the Independent Counsel from the President's attorney acknowledging that certain gifts given by Monica Lewinsky to the President could not be located. Thus, there is substantial and credible evidence that the President may have testified falsely about being alone with Monica Lewinsky and the gifts he gave to her.

Eight, there is substantial and credible evidence that the President may have testified falsely under oath in his deposition concerning conversations with Monica Lewinsky about her involvement in the *Jones* case.

The record tends to reflect the following:

The President was asked at his deposition if he ever talked to Ms. Lewinsky about the possibility that she would testify in the *Jones* case. He answered, "I'm not sure." He then related a conversation with Ms. Lewinsky or he joked about how the Jones attorneys would probably subpoena every female witness with whom he had ever spoken. He was also asked whether Ms. Lewinsky told

him that she had been subpoenaed. The answer was, no, I don't know if she had been.

There is substantial evidence, much from the President's own grand jury testimony, that those statements were false. The President testified before the grand jury that he spoke with Ms. Lewinsky at the White House on December 28, 1997, and that they spoke about the prospect that she might have to give testimony. He also later testified that Vernon Jordan told him on December 19, 1997, that Ms. Lewinsky had been subpoenaed. That is the date on which she received the subpoena.

Nine, there is substantial and credible evidence that the President may have endeavored to obstruct justice by engaging in a pattern of activity calculated to conceal evidence from the judicial proceedings regarding his relationship with Monica Lewinsky.

The record tends to establish that on Sunday, December 28, 1997, the President gave Ms. Lewinsky Christmas gifts in the Oval Office during a visit arranged by Ms. Currie. According to Ms. Lewinsky, when she suggested that the gifts he had given her be concealed because they were the subject of a subpoena, the President stated, "I don't know," or "Let me think about that."

Ms. Lewinsky testified that Ms. Currie contacted her at home several hours later and stated either I understand you have something to give me, or the President says you have something to give me. Later that same day, Ms. Currie picked up a box of gifts from Ms. Lewinsky's home.

The evidence indicates that the President may have instructed Ms. Currie to conceal evidence. The President has denied giving that instruction, and he contended under oath that he advised Ms. Lewinsky to provide all of the gifts to the *Jones* attorneys pursuant to the subpoena. In contrast, Ms. Lewinsky testified that the President never challenged her suggestion that the gifts should be concealed.

Ten, there is substantial and credible evidence that the President himself may have endeavored to obstruct justice in the case of *Jones* v. *Clinton* by agreeing with Monica Lewinsky on a cover story about their relationship by causing a false affidavit to be filed and by giving false and misleading testimony in his deposition. The record tends to establish that the President and Ms. Lewinsky agreed on false explanations for her private visit to the Oval Office. Ms. Lewinsky testified that when the President contacted her and told her she was on the witness list, he advised her that she could always repeat those cover stories and that she could file an affidavit.

Subsequently, during his deposition, the President stated that he never had a sexual relationship or affair with Ms. Lewinsky. He further stated that the paragraph in Ms. Lewinsky's affidavit denying a sexual relationship with the President was absolutely true, even though his attorney had argued that the affidavit covered "sex of any kind, in any manner, shape or form."

Eleven, there is substantial and credible evidence that the President may have endeavored to obstruct justice by helping Monica Lewinsky to obtain a job in New York City at a time when she would have given evidence adverse to Mr. Clinton if she told the truth.

The record tends to establish the following:

In October, 1997, the President and Ms. Lewinsky discussed the possibility of Vernon Jordan assisting her in finding a job in New York. On November 5, 1997, Mr. Jordan and Ms. Lewinsky discussed employment possibilities, and Mr. Jordan told her that she came highly recommended.

However, no significant action was taken on Ms. Lewinsky's behalf until December when the *Jones* attorneys identified Ms. Lewinsky as a witness. Within days, after Mr. Jordan again met with Ms. Lewinsky, he contacted a number of people in the private sector who could help her find work in New York.

Additional evidence indicates that on the day Ms. Lewinsky signed a false affidavit denying a sexual relationship with the President, Mr. Jordan contacted the President and discussed the affidavit. The next day, Ms. Lewinsky interviewed with MacAndrews & Forbes, an interview arranged with Mr. Jordan's assistance. And when Ms. Lewinsky told Mr. Jordan that the interview went poorly, Mr. Jordan contacted the chief executive officer of MacAndrews & Forbes. The following day, Ms. Lewinsky was offered the job, and Mr. Jordan contacted the White House with the message, mission accomplished.

In sum, Mr. Jordan secured a job for Ms. Lewinsky with a phone call placed on the day after Ms. Lewinsky signed a false affidavit protecting the President.

Twelve, there is substantial and credible evidence that the President may have testified falsely under oath in his deposition concerning his conversations with Vernon Jordan about Ms. Lewinsky.

The record tends to establish that Mr. Jordan and the President discussed Ms. Lewinsky on various occasions from the time she was served until she fired Mr. Carter and hired Mr. Ginsburg. This is contrary to the President's deposition testimony. The President was asked in his deposition whether anyone besides his attorney told him that Ms. Lewinsky had been served. "I don't think so," he responded. He then said that Bruce Lindsey was the first person who told him. In the grand jury, the President was specifically asked if Mr. Jordan informed him that Ms. Lewinsky was under subpoena. "No sir," he answered. Later in that testimony, when confronted with a specific date, the President admitted that he spoke with Mr. Jordan about the subpoena. Both the President and Mr. Jordan testified in the grand jury that Mr. Jordan informed the President on January 7 that Ms. Lewinsky had signed the affidavit. Ms. Lewinsky said she, too, informed the President of the subpoena.

The President was also asked during his deposition if anyone reported to him within the past 2 weeks—that would have been 2 weeks prior to January 17th—that they had a conversation with Monica Lewinsky concerning the lawsuit. The President said "I don't think so." As noted, Mr. Jordan told the President on January 7th that Ms. Lewinsky signed the affidavit. In addition, the President was asked if he had a conversation with Mr. Jordan where Ms. Lewinsky's name was mentioned. He said yes, Mr. Jordan mentioned she had asked for advice about moving to New York. Actually, the President had conversations with Mr. Jordan concerning three general subjects: Choosing an attorney to represent Ms.

Lewinsky, Ms. Lewinsky's subpoena and the contents of her executed affidavit, and Vernon Jordan's success in procuring a New York job for Ms. Lewinsky.

Thirteen, there is substantial and credible evidence that the President may have endeavored to obstruct justice and engage in witness tampering in attempting to coach and influence the testimony of Betty Currie before the grand jury.

The record tends to establish the following:

According to Ms. Currie, the President contacted her on the day he was deposed in the *Jones* case and asked her to meet him the following day. The next day, Ms. Currie met with the President, and he asked her whether she agreed with a series of possibly false statements, including we were never really alone. You could always see and hear everything, and Monica came on to me and I never touched her, right? Ms. Currie stated that the President's tone and demeanor indicated he wanted her to agree with those statements. According to Ms. Currie, the President called her into the Oval Office several days later and reiterated his previous statement using the same tone and demeanor. Ms. Currie later stated that she felt she was free to disagree with the President.

The President testified concerning those statements before the grand jury, and he did not deny that he made them. Rather, the President testified that in some of the statements he was referring only to meetings with Ms. Lewinsky in 1997 and that he intended the word "alone" to mean the entire Oval Office.

Fourteen, there is substantial and credible evidence that the President may have engaged in witness tampering by coaching prospective witnesses and by narrating elaborate detailed false accounts of his relationship with Ms. Lewinsky as if those stories were true, intending that those witnesses believe the story and testify to it before a grand jury.

John Podesta, the President's deputy chief of staff, testified that the President told him that he did not have sex with Ms. Lewinsky in any way whatsoever and that they had not had oral sex. Mr. Podesta repeated those statements to the grand jury.

Sidney Blumenthal, an assistant to the President, said that the President told him more detailed stories. He testified that the President told him that Ms. Lewinsky, who the President claimed had a reputation as a stalker, came at him, made sexual demands at him and threatened him, but he rebuffed her.

Mr. Blumenthal further testified that the President told him that he could recall placing only one call to Ms. Lewinsky. Mr. Blumenthal mentioned to the President that there were press reports that he, the President, had made telephone calls to Ms. Lewinsky and had left voice mail messages. The President then told Mr. Blumenthal that he remembered calling Ms. Lewinsky after Betty Currie's brother died.

Fifteen, there is substantial and credible evidence that the President may have given false testimony under oath before the Federal grand jury concerning his knowledge of the contents of Monica Lewinsky's affidavit and his knowledge of remarks made in his presence by his counsel.

The record tends to establish the following:

During the deposition, the President's attorney attempted to thwart questions pertaining to Ms. Lewinsky by citing her affidavit and asserting to the court that the affidavit represented that "there is absolutely no sex of any kind, manner, shape or form with President Clinton." At several points in his grand jury testimony, the President maintained that he could not be held responsible for this representation made by his lawyer because he was not paying attention to the interchange between his lawyer and the court. The videotape of the deposition shows the President apparently listening intently to the interchange; and, in addition, Mr. Clinton's counsel represented to the court that the President was fully aware of the affidavit and its contents.

The President's own attorney asked him during the deposition whether Ms. Lewinsky's affidavit denying a sexual relationship was "true and accurate." The President was unequivocal. He said, this is absolutely true. Ms. Lewinsky later said the affidavit contained false and misleading statements. The President explained to the grand jury that Ms. Lewinsky may have believed that her affidavit was true if she believed that "sexual relationship" meant intercourse. However, counsel did not ask the President if Ms. Lewinsky thought it was true; he asked the President if it was, in fact, a true statement. The President at that point was bound by the court's definition, and under his own interpretation of that definition, Ms. Lewinsky engaged in sexual relations. An affidavit denying this under the President's own interpretation of the definition is false.

That, Mr. Chairman, is my report to this committee. The guiding object of our efforts over the past 3 weeks has been a search for the truth. We felt it our obligation to follow the facts and laws wherever they might lead, fairly and impartially. If this committee sees fit to proceed to the next level of inquiry, we will continue to do so under your guidance.

Thank you, Mr. Chairman.

[The statement of Mr. Schippers follows:]

PREPARED STATEMENT OF DAVID P. SCHIPPERS, CHIEF INVESTIGATIVE COUNSEL

Mr. Chairman, Mr. Conyers, members of the committee, as chief investigative counsel for the majority I have been called upon to advise the Judiciary Committee of the results of our analysis and review of the September 9, 1998, referral from the Office of Independent Counsel, in which it concluded that there is substantial and credible information that President William Jefferson Clinton committed acts that may constitute grounds for an impeachment.

In executing the task assigned to us, my staff and I have made a deliberate effort to discount the political aspects of our examination and to ignore any partisan tactics and strategy. The standard of review was set by me in our very first meeting following the delivery of the material. I reminded the staff that we are not advocates, but professionals asked to perform a professional, albeit distasteful duty. Therefore, I asked them to review the referral and supporting data in the light most favorable to the President.

Throughout this effort we have been determined to avoid even the suggestion of preference. We view our responsibility as requiring an unbiased, full and expeditious review, untrammeled by any preconceived notions or opinions. Our approach has been solely in keeping with constitutional and legal standards of fairness and impartiality.

Before moving on to the substantive areas of the report, I would like to address two elementary, but basic, concepts of our constitutional government. They will serve to put our conclusions in the proper perspective.

FIRST: The President of the United States enjoys a singular and appropriately lofty position in our system of government. But that position by its very nature in-

volves equally unique and onerous responsibilities, among which are included affirmative obligations that apply to no other citizen.

Specifically, the Constitution of the United States imposes upon the President the explicit and affirmative duty to "take Care that the Laws be faithfully executed . . ." Article II, Section 3. Moreover, before entering upon the duties of his office, the President is constitutionally commanded to take the following oath:

I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.

The President, then, is the chief law enforcement officer of the United States. Although he is neither above nor below the laws, he is, by virtue of his office, held to a higher standard than any other American. Furthermore, as Chief Executive Officer and Commander in Chief, he is the repository of a special trust.

SECOND: Many defendants who face legal action, whether it be civil or criminal, may honestly believe that the case against them is unwarranted and factually deficient. It is not, however, in the discretion of the litigant to decide that any tactics are justified to defeat the lawsuit in that situation. Rather, it is incumbent upon that individual to testify fully and truthfully during the truth seeking phase. It is then the function of the system of law to expose the frivolous cases. The litigant may not with impunity mislead, deceive or lie under oath in order to prevail in the lawsuit or for other personal gain. Any other result would be subversive of the American rule of law.

The principle that every witness in every case must tell the truth, the whole truth and nothing but the truth, is the foundation of the American system of justice which is the envy of every civilized nation. The sanctity of the oath taken by a witness is the most essential bulwark of the truth seeking function of a trial, the American method of ascertaining the facts. If lying under oath is tolerated and, when exposed, is not visited with immediate and substantial adverse consequences, the integrity of this country's entire judicial process is fatally compromised and that process will inevitably collapse. The subject matter of the underlying case, whether civil or criminal, and the circumstances under which the testimony is given are of no significance whatever. It is the oath itself that is sacred and must be enforced.

> The Independent Counsel Act (Title 18, United States Code, Section 591, et seq.) provides in relevant part: An independent counsel shall advise the House of Representatives of any substantial and credible information . . . that may constitute grounds for an impeachment.

In compliance with the statutory mandate, the Office of Independent Counsel Kenneth Starr, informed the House of Representatives on September 9, 1998, that it was prepared to submit a referral under the statute. On that day, the Independent Counsel's Office delivered to the House the following material:

A. A referral consisting of an Introduction, a Narrative of Relevant Events and an Identification and Analysis of the Substantial and Credible Information that may support grounds for impeachment of William Jefferson Clinton;

B. An appendix in six three-ring binders totaling in excess of 2500 pages of the most relevant testimony and other material cited in the Referral; and

C. Seventeen transmittal boxes containing grand jury transcripts, deposition transcripts, FBI reports, reports of interviews, and thousand of pages of incidental back-up documents.

Pursuant to House Resolution 525, all of this material was turned over to the Committee on the Judiciary to be held in Executive Session until September 28, 1998. At that time the House ordered that all materials be released to the public, except those which were withheld by action of the committee.

My staff and the minority staff were instructed by the committee to review the referral, together with all of the other evidence and testimony that was submitted, for the purpose of determining whether there actually existed "substantial and credible" evidence that President William Jefferson Clinton may have committed acts that may constitute grounds to proceed to a resolution for an impeachment inquiry.

Because of the narrow scope of our directive, the investigation and analysis was necessarily circumscribed by information delivered with the referral together with some information and analysis furnished by the counsel for the President. For that reason, we did not seek to procure any additional evidence or testimony from any other source. Particularly, we did not seek to obtain or review the material that remained in the possession of the OIC. In two telephone conversations with Mr. Bittman, Mr. Lowell and I were assured that the retained material was deemed unnecessary to comply with the statutory requirement under Section 595(c). Though Mr. Bittman offered to make available to both counsel all of that material, my staff and I did not deem it necessary or even proper to go beyond the submission itself.

At the suggestion of the minority counsel, the retained material was reviewed by members of both staffs. The material was, as anticipated, irrelevant.

To support the referral, the House has been furnished with grand jury transcripts, FBI interview memoranda, transcripts of depositions, other interview memoranda, statements, audio recordings, and, where available, video recordings of all persons named in the referral. In addition, the House was provided with a copy of every document cited and a mass of documentary and other evidence produced by witnesses, the White House, the President, the Secret Service and the Department of Defense.

This report is confined solely to that referral and supporting evidence and testimony supplied to the House and then to this committee, supplemented only by the information provided by the President's counsel. Although the original submission contained a transcript of the President's deposition testimony, no video tape was included. Pursuant to a request by Chairman Hyde, a video tape of the entire deposition was later provided to the committee by the District Judge. Both that video and the video of the President's testimony before the grand jury have been thoroughly reviewed by all members of my staff and by me personally.

Apart from the thorough review of President Clinton's deposition and grand jury testimony, the following functions were performed in preparation for this report:

1. All grand jury transcripts and memoranda of interview of Ms. Currie, Mr. Jordan, Ms. Lewinsky, the Secret Service Agents, and Ms. Tripp were independently reviewed, compared and analyzed by at least three members of the staff; and those of Ms. Currie, Mr. Jordan, Ms. Lewinsky, Ms. Tripp and both appearances of the President by me personally.

2. All of the remaining grand jury transcripts, deposition transcripts and memoranda of the others interviewed were likewise reviewed, compared and analyzed. This involved more than 250 separate documents, some consisting of hundreds of pages. In this regard, my staff was instructed to seek any information that might cast doubt upon the legal or factual conclusions of the Independent Counsel.

3. The entire appendix, consisting of in excess of two thousand pages, was systematically reviewed and analyzed against the statements contained in the referral.

4. I personally read the entire evidence reference and legal reference that accompanied the referral. I analyzed the legal precepts and theories, and read at least the relevant portions of each case cited.

5. In addition to other members of the staff, I personally read and analyzed the 11 specific allegations made by the Independent Counsel, and reviewed the evidentiary basis for those allegations. Each footnote supporting the charges was checked to insure that it did, in fact, support the underlying evidentiary proposition. In cases where inferences were drawn in the body of the referral, the validity of those inferences was tested under acceptable principles of federal trial practice.

6. Each of the literally thousands of back-up documents was reviewed in order to insure that no relevant evidence had been overlooked.

7. Meetings of the entire staff were conducted on virtually a daily basis for the purpose of coordinating efforts and to synthesize the divergent material into a coherent report.

Having completed all of the tasks assigned to us, we are now prepared to report our findings to you, the members of this committee. We are fully aware that the purpose of this hearing is solely for the committee to decide whether there is sufficient credible and substantial evidence to proceed to an impeachment inquiry. This and nothing more. Of course, as members of this committee, you and only you are authorized and encouraged eventually to make your own independent judgment on what constitutes impeachable offenses and the standards of proof that might be applicable. My report, then, represents a distillation and consensus of the staff's efforts and conclusions for your guidance and consideration.

At the outset, one point needs to be made. The witness, Monica Lewinsky's credibility may be subject to some skepticism. At an appropriate stage of the proceedings, that credibility will, of necessity, be assessed together with the credibility of all witnesses in the light of all the other evidence. Ms. Lewinsky admitted to having lied on occasion to Linda Tripp and to having executed and caused to be filed a false affidavit in the *Paula Jones* case.

On the other hand, Ms. Lewinsky obtained a grant of immunity for her testimony before the grand jury and, therefore, had no reason to lie thereafter. Furthermore, the witness' account of the relevant events could well have been much more damaging. For the most part, though, the record reflects that she was an embarrassed and reluctant witness who actually downplayed her White House encounters. In testifying, Ms. Lewinsky demonstrated a remarkable memory, supported by her personal

diary, concerning dates and events. Finally, the record includes ample corroboration of her testimony by independent and disinterested witnesses, by documentary evidence, and, in part, by the grand jury testimony of the President himself. Consequently, for the limited purpose of this report, we suggest that Monica Lewinsky's testimony is both substantial and credible.

It has been the considered judgment of my staff and myself that our main focus should be on those alleged acts and omissions by the President which affect the rule of law, and the structure and integrity of our court system. Deplorable as the numerous sexual encounters related in the evidence may be, we chose to emphasize the consequences of those acts as they affect the administration of justice and the unique role the President occupies in carrying out his oath faithfully to execute the laws of the Nation.

The prurient aspect of the referral is, at best, merely peripheral to the central issues. The assertions of presidential misconduct cited in the referral, though arising initially out of sexual indiscretions, are completely distinct and involve allegations of an ongoing series of deliberate and direct assaults by Mr. Clinton upon the justice system of the United States, and upon the judicial branch of our government, which holds a place in the constitutional framework of checks and balances equal to that of the executive and the legislative branches.

As a result of our research and review of the referral and supporting documentation, we respectfully submit that there exists substantial and credible evidence of fifteen separate events directly involving President William Jefferson Clinton that could constitute felonies which, in turn, may constitute grounds to proceed with an impeachment inquiry.

I will now present the catalog of those charges, together with a brief statement of the evidence supporting each.

Please understand that nothing contained in this report is intended to constitute an accusation against the President or anyone else; nor should it be construed as such. What follows is nothing more than a litany of the crimes that might have been committed based upon the substantial and credible evidence provided by the Independent Counsel, and reviewed, tested and analyzed by the staff.

With that caution in mind, I will proceed:

I.

There is substantial and credible evidence that the President may have been part of a conspiracy with Monica Lewinsky and others to obstruct justice and the due administration of justice by: (A) providing false and misleading testimony under oath in a civil deposition and before the grand jury; (B) withholding evidence and causing evidence to be withheld and concealed; and (C) tampering with prospective witnesses in a civil lawsuit and before a federal grand jury.

The President and Ms. Lewinsky had developed a "cover story" to conceal their activities. (M.L. 8/6/98 GJ, at pp. 555, 234). On December 6, 1997, the President learned that Ms. Lewinsky's name had appeared on the *Jones* v. *Clinton* witness list. (Clinton GJ, p. 84). He informed Ms. Lewinsky of that fact on December 17, 1997, and the two agreed that they would employ the same cover story in the *Jones* case. (M.L. 8/6/98 GJ, pp. 122–123;

M.L. 2/1/98 Proffer). The President at that time suggested that an affidavit might be enough to prevent Ms. Lewinsky from testifying. (M.L. 8/6/98 GJ, pp. 122–123). On December 19, 1997, Ms. Lewinsky was subpoenaed to give a deposition in the *Jones* case. (M.L. 8/6/98 GJ, p. 128).

Thereafter, the record tends to establish that the following events took place:

(1) In the second week of December, 1997, Ms. Lewinsky told Ms. Tripp that she would lie if called to testify and tried to convince Ms. Tripp to do the same. (M.L. 8/6/98 GJ, p. 127).

(2) Ms. Lewinsky attempted on several occasions to get Ms. Tripp to contact the White House before giving testimony in the *Jones* case. (Tripp 7/16/98 GJ, p. 75; M.L. 8/6/98 GJ, p. 71).

(3) Ms. Lewinsky participated in preparing a false and intentionally misleading affidavit to be filed in the *Jones* case. (M.L. 8/6/98 GJ, pp. 200–203).

(4) Ms. Lewinsky provided a copy of the draft affidavit to a third party for approval and discussed changes calculated to mislead. (M.L. 8/6/98 GJ, pp. 200–202).

(5) Ms. Lewinsky and the President talked by phone on January 6, 1998, and agreed that she would give false and misleading answers to questions about her job at the Pentagon. (M.L. 8/6/98 GJ, p. 197).

(6) On January 7, 1998, Ms. Lewinsky signed the false and misleading affidavit. (M.L. 8/6/98 GJ, p. 203). Conspirators intended to use the affidavit to avoid

Ms. Lewinsky's giving a deposition. (M.L. 8/6/98 GJ, pp. 122–123; M.L. 2/1/98 Proffer).

(7) After Ms. Lewinsky's name surfaced, conspirators began to employ code names in their contacts. (M.L. 8/6/98 GJ, pp. 215–217).

(8) On December 28, 1997, Ms. Lewinsky and the President met at the White House and discussed the subpoena she had received. Ms. Lewinsky suggested that she conceal the gifts received from the President. (M.L. 8/6/98 GJ, p. 152).

(9) Shortly thereafter, the President's personal secretary, Betty Currie, picked up a box of the gifts from Ms. Lewinsky. (Currie 5/6/98 GJ, pp. 107–108; M.L. 8/6/98 GJ, pp. 154–156).

(10) Betty Currie hid the box of gifts under her bed at home. (Currie 5/6/98 GJ, pp. 107–108; Currie 1/27/98 GJ, pp. 57–58).

(11) The President gave false answers to questions contained in Interrogatories in the *Jones* case. (V2–DC–53; V2–DC–104).

(12) On December 31, 1997, Ms. Lewinsky, at the suggestion of a third party, deleted 50 draft notes to the President. (M.L. 8/1/98 OIC Interview, p. 13). She had already been subpoenaed in the *Jones* case.

(13) On January 17, 1998, the President's attorney produced Ms. Lewinsky's false affidavit at the President's deposition and the President adopted it as true.

(14) On January 17, 1998, in his deposition, the President gave false and misleading testimony under oath concerning his relationship with Ms. Lewinsky about the gifts she had given him and several other matters. (Clinton Dep., pp. 49–84; M.L. 7/27/98 OIC Interview, pp. 12–15).

(15) The President, on January 18, 1998, and thereafter, coached his personal secretary, Betty Currie, to give a false and misleading account of the Lewinsky relationship if called to testify. (Carrie 1/27/98 GJ, pp. 71–74, 81).

(16) The President narrated elaborate detailed false accounts of his relationship with Monica Lewinsky to prospective witnesses with the intention that those false accounts would be repeated in testimony. (Currie 1/27/98 GJ, pp. 71–74, 81; Podesta 6/16/98 GJ, pp. 88–92; Blumenthal 6/4/98 GJ, pp. 49–51; Blumenthal 6/25/98 GJ, p. 8; Bowles 4/2/98 GJ, pp. 83–84; Ickes 6/10/98 GJ, p. 73; Ickes 8/5/98 GJ, p. 88).

(17) On August 17, 1998, the President gave false and misleading testimony under oath to a federal grand jury on the following points: his relationship with Ms. Lewinsky, his testimony in the January 17, 1998, deposition, his conversations with various individuals and his knowledge of Ms. Lewinsky's affidavit and its falsity.

At this point, I would like to illustrate some of the details concerning the events immediately before and after the President's deposition on January 17, 1998.

These facts appear in the record:

On January 7, 1998, Ms. Lewinsky signed the false affidavit, and it was furnished to Mr. Clinton's civil lawyer. The President reviewed it, so he knew that she had denied their relationship when the deposition began.

During the questioning, however, it became more and more apparent to the President that Ms. Jones' attorneys possessed a lot more specific detail than the President anticipated.

When the President returned to the White House, the calls began:

January 17, 1998
Saturday

4:00 p.m. (approx.).	**THE PRESIDENT** finishes testifying under oath in *Jones* v. *Clinton, et al.*
5:19 p.m.	Vernon Jordan places a call to the White House from a cellular phone.
5:38 p.m.	**THE PRESIDENT** telephones Vernon Jordan at home.
7:02 p.m.	**THE PRESIDENT** telephones Betty Currie at home but does not speak with her.
7:02 p.m.	**THE PRESIDENT** places a call to Mr. Jordan's office.
7:13 p.m.	**THE PRESIDENT** contacts Betty Currie at home and asks her to meet with him on Sunday.

January 18, 1998
Sunday

6:11 a.m.	**THE PRESIDENT** learns about the existence of the Tripp tapes.
11:49 p.m.	Vernon Jordan telephones the White House.

January 18, 1998—Continued
Sunday

12:30 p.m. (approx.).	Vernon Jordan has lunch with Bruce Lindsey. Lindsey informs Jordan about the existence of the Tripp tapes.
12:50 p.m.	**THE PRESIDENT** telephones Vernon Jordan at home.
1:11 p.m.	**THE PRESIDENT** telephones Betty Currie at home.
2:15 p.m.	Vernon Jordan telephones the White House on his cellular phone.
2:55 p.m.	Vernon Jordan telephones THE PRESIDENT.
5:00 p.m.	**THE PRESIDENT** meets with Betty Currie. He tells her that he was questioned at his deposition about Monica Lewinsky, and he suggests that Ms. Currie could "see and hear everything" that occurred when Ms. Lewinsky visited with him.
5:12 p.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home.".
6:22 p.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home.".
7:06 p.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home.".
7:19 p.m.	Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.
8:28 p.m.	Betty Currie pages Monica Lewinsky with the message "Call Kay."
10:09 p.m.	Monica Lewinsky telephones Betty Currie at home.
11:02 p.m.	**THE PRESIDENT** telephones Betty Currie at home.

January 19, 1998
Monday—Martin Luther King Day

7:02 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home at 8:00 this morning."
8:08 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay."
8:33 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home."
8:37 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kay at home. It's a social call. Thank you."
8:41 a.m.	Betty Currie pages Monica Lewinsky with the message "Kay is at home. Please call."
8:43 a.m.	Betty Currie telephones the President from home.
8:44 a.m.	Betty Currie pages Monica Lewinsky with the message "Please call Kate re: family emergency."
8:50 a.m.	**THE PRESIDENT** telephones Betty Currie at home.
8:51 a.m.	Betty Currie pages Monica Lewinsky with the message "Msg. From Kay. Please call, have good news."
8:56 a.m.	**THE PRESIDENT** telephones Vernon Jordan at home.
10:29 a.m.	Vernon Jordan telephones the White House from his office.
10:35 a.m.	Vernon Jordan telephones Nancy Hernreich at the White House.
10:36 a.m.	Vernon Jordan pages Monica Lewinsky with the message. "Please call Mr. Jordan at [number redacted]."
10:44 a.m.	Vernon Jordan telephones Erskine Bowles at the White House.
10:53 a.m.	Vernon Jordan telephones Monica Lewinsky's attorney, Frank Carter.
10:58 a.m.	**THE PRESIDENT** telephones Vernon Jordan at his office.
11:04 a.m.	Vernon Jordan telephones Bruce Lindsey at the White House.
11:16 a.m.	Vernon Jordan pages Monica Lewinsky with the message. "Please call Mr. Jordan at [number redacted]."
11:17 a.m.	Vernon Jordan telephones Bruce Lindsey at the White House.
12:31 p.m.	Vernon Jordan telephones the White House from a cellular phone.
1:45 p.m.	**THE PRESIDENT** telephones Betty Currie at home.
2:29 p.m.	Vernon Jordan telephones the White House from a cellular phone.
2:44 p.m.	Vernon Jordan enters the White House. He meets with THE PRESIDENT, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, Rahm Emanuel and others.
2:46 p.m.	Frank Carter pages Monica Lewinsky with message, "Please call Frank Carter at [number redacted]."
4:51 p.m.	Vernon Jordan telephones Betty Currie at home.
4:53 p.m.	Vernon Jordan telephones Frank Carter at home.
4:54 p.m.	Vernon Jordan telephones Frank Carter at his office. Mr. Carter informs Mr. Jordan that Monica Lewinsky has replaced Mr. Carter with a new attorney.

January 19, 1998—Continued
Monday—Martin Luther King Day

4:58 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
4:59 p.m.	Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.
5:00 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
5:00 p.m.	Vernon Jordan telephones Charles Ruff at the White House Counsel's Office.
5:05 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
5:05 p.m.	Vernon Jordan again telephones Bruce Lindsey at the White House Counsel's Office.
5:09 p.m.	Vernon Jordan telephones Cheryl Mills at the White House Counsel's Office.
5:14 p.m.	Vernon Jordan telephones Frank Carter at his office.
5:22 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
5:22 p.m.	Vernon Jordan telephones Bruce Lindsey at the White House Counsel's Office.
5:55 p.m.	Vernon Jordan telephones Betty Currie at home.
5:56 p.m.	**THE PRESIDENT** telephones Vernon Jordan at his office.
6:04 p.m.	Vernon Jordan telephones Betty Currie at home.
6:26 p.m.	Vernon Jordan telephones Stephen Goodin, an aide to THE PRESIDENT.

II.

There is substantial and credible evidence that the President may have aided, abetted, counseled, and procured Monica Lewinsky to file and caused to be filed a false affidavit in the case of *Jones* v. *Clinton, et al.,* in violation of 18 U.S.C. 1623 and 2.

The record tends to establish the following:

In a telephone conversation with Ms. Lewinsky on December 17, 1997, the President told her that her name was on the witness list in the *Jones* case. (M.L. 8/6/98 GJ, p.123). The President then suggested that she might submit an affidavit to avoid testimony. (Id.). Both the President and Ms. Lewinsky knew that the affidavit would need to be false in order to accomplish that result. In that conversation, the President also suggested "You know, you can always say you were coming to see Betty or that you were bringing me letters." (M.L. 8/6/98 GJ, p.123). Ms. Lewinsky knew exactly what he meant because it was the same "cover story" that they had agreed upon earlier. (M.L. 8/6/98 GJ, p.124).

Thereafter, Ms. Lewinsky discussed the affidavit with and furnished a copy to a confidant of the President for approval. (M.L. 8/6/98 GJ, pp. 200–202). Ms. Lewinsky signed the false affidavit and caused her attorney to provide it to the President's lawyer for use in the *Jones* case.

III.

There is substantial and credible evidence that the President may have aided, abetted, counseled, and procured Monica Lewinsky in obstruction of justice when she executed and caused to be filed a false affidavit in the case of *Jones* v. *Clinton, et al.,* with knowledge of the pending proceedings and with the intent to influence, obstruct or impede that proceeding in the due administration of justice, in violation of 18 U.S.C. 1503 and 2.

The record tends to establish that the President not only aided and abetted Monica Lewinsky in preparing, signing and causing to be filed a false affidavit, he also aided and abetted her in using that false affidavit to obstruct justice.

Both Ms. Lewinsky and the President knew that her false affidavit would be used to mislead the Plaintiff's attorneys and the court. Specifically, they intended that the affidavit would be sufficient to avoid Ms. Lewinsky being required to give a deposition in the *Jones* case. Moreover, the natural and probable effect of the false statement was interference with the due administration of justice. If the court and the *Jones* attorneys were convinced by the affidavit, there would be no deposition of Ms. Lewinsky, and the Plaintiff's attorneys would be denied the ability to learn about material facts and to decide whether to introduce evidence of those facts.

Mr. Clinton caused his attorney to employ the knowingly false affidavit not only to avoid Ms. Lewinsky's deposition, but to preclude the attorneys from interrogating the President about the same subject. (Clinton Dep., p. 54).

IV.

There is substantial and credible evidence that the President may have engaged in misprision of Monica Lewinsky's felonies of submitting a false affidavit and of obstructing the due administration of justice both by taking affirmative steps to con-

ceal those felonies, and by failing to disclose the felonies though under a constitutional and statutory duty to do so, in violation of 18 U.S.C. 4.

The record tends to establish the following:

Monica Lewinsky admitted to the commission of two felonies: Signing a false affidavit under oath (M.L. 8/6/98 GJ, pp. 204–205) and endeavoring to obstruct justice by using the false affidavit to mislead the court and the lawyers in the *Jones* case so that she would not be deposed and be required to give evidence concerning her activities with the President. (M.L. 8/6/98 GJ, pp. 122–123; M.L. 2/1/98 Proffer). In addition, the President was fully aware that those felonies had been committed when he gave his deposition testimony on January 17, 1998. (Clinton Dep., p.54).

Nonetheless, Mr. Clinton took affirmative steps to conceal these felonies, including allowing his attorney, in his presence, to use the affidavit and to suggest that it was true. (Clinton Dep., p. 54). More importantly, the President himself, while being questioned by his own counsel referring to one of the clearly false paragraphs in Ms. Lewinsky's affidavit, stated, "That is absolutely true." (Clinton Dep., p. 203).

More importantly, the President is the chief law enforcement officer of the United States. He is under a constitutional duty to take care that the laws be faithfully executed. When confronted with direct knowledge of the commission of a felony, he is required by his office, as is every other law enforcement officer, agent or attorney, to bring to the attention of the appropriate authorities the fact of the felony and the identity of the perpetrator. If he did not do so, the President could be guilty of misprision of felony.

V.

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition in *Jones* v. *Clinton, et al.* on January 17, 1998 regarding his relationship with Monica Lewinsky, in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish the following:

There are three instances where credible evidence exists that the President may have testified falsely about this relationship:

(1) When he denied a "sexual relationship" in sworn Answers to Interrogatories (V2–DC–53 and V2–DC–104);

(2) When he denied having an "extramarital sexual affair" in his deposition (Clinton Dep., p. 78); and

(3) When he denied having "sexual relations" or "an affair" with Monica Lewinsky in his deposition. (Clinton Dep., p. 78).

When the President denied a sexual relationship he was not bound by the definition the court had provided. There is substantial evidence obtained from Ms. Lewinsky, the President's grand jury testimony, and DNA test results that Ms. Lewinsky performed sexual acts with the President on numerous occasions. Those terms, given their common meaning, could reasonably be construed to include oral sex. The President also denied having sexual relations with Ms. Lewinsky (Clinton Dep., p. 78), as the court defined the term. (Clinton Dep., Ex. 1). In the context of the lawsuit and the wording of that definition, there is substantial evidence that the President's explanation given to the grand jury is an afterthought and is unreasonably narrow under the circumstances. Consequently, there is substantial evidence that the President's denial under oath in his deposition of a "sexual relationship", a "sexual affair" or "sexual relations" with Ms. Lewinsky was not true.

VI.

There is substantial and credible evidence that the President may have given false testimony under oath before the federal grand jury on August 17, 1998, concerning his relationship with Monica Lewinsky, in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish the following:

During his grand jury testimony, the President admitted only to "inappropriate intimate contact" with Monica Lewinsky. (Clinton GJ, p. 10). He did not admit to any specific acts. He categorically denied ever touching Ms. Lewinsky on the breasts or genitalia for the purpose of giving her sexual gratification. There is, however, substantial contradictory evidence from Ms. Lewinsky. She testified at length and with specificity that the President kissed and fondled her breasts on numerous occasions during their encounters, and at times there was also direct genital contact. (M.L. 8/26/98 Dep., pp. 30–38, 50–53). Moreover, her testimony is corroborated by several of her friends. (Davis 3/17/98 GJ, p. 20; Erbland 2/12/98 GJ, p. 29, 45; Ungvari 3/19/98 GJ, pp. 23–24; Bleiler 1/28/98 OIC Interview, p. 3).

The President described himself as a non-reciprocating recipient of Ms. Lewinsky's services. (Clinton GJ, p. 151). Therefore, he suggested that he did not engage in "sexual relations" within the definition given him at the *Jones* case deposition. (Id). He also testified that his interpretation of the word "cause" in the definition meant the use of force or contact with the intent to arouse or gratify. (Clinton GJ., pp. 17–18). The inference drawn by the Independent Counsel that the President's explanation was merely an afterthought, calculated to explain away testimony that had been proved false by Ms. Lewinsky's evidence, appears credible under the circumstances.

VII.

There is substantial and credible evidence that the President may have given false testimony under oath in his deposition given in *Jones* v. *Clinton, et al.* on January 17, 1998, regarding his statement that he could not recall being alone with Monica Lewinsky and regarding his minimizing the number of gifts that they had exchanged in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish the following:

President Clinton testified at his deposition that he had "no specific recollection" of being alone with Ms. Lewinsky in any room at the White House. (Clinton Dep., p. 59). There is ample evidence from other sources to the contrary. They include: Betty Currie (1/27/98 GJ, pp. 32–33; 5/6/98 GJ, p. 98; 7/22/98 GJ, pp. 25–26); Monica Lewinsky (M.L. 2/1/98 Proffer; M.L. 8/26/98 GJ); several Secret Service Agents and White House logs. Moreover, the President testified in the grand jury that he was "alone" with Ms. Lewinsky in 1996 and 1997 and that he had a "specific recollection" of certain instances when he was alone with her. (Clinton GJ, pp. 30–32). He admitted to the grand jury that he was alone with her on December 28, 1997, only three weeks prior to his deposition testimony. (Clinton GJ, p. 34).

The President was also asked at this deposition whether he had ever given gifts to Ms. Lewinsky. He responded, "I don't recall." He then asked the *Jones* attorney if he knew what they were. After the attorney named specific gifts, the President finally remembered giving Ms. Lewinsky something from the Black Dog. (Clinton Dep., p. 75). That testimony was given less than three weeks after Ms. Currie had picked up a box of the President's gifts and hid them under her bed. (Currie 1/27/98 GJ, pp. 57–58; Currie 5/6/98 GJ, pp. 107–108).

In his grand jury testimony nearly 7 months later, he admitted giving Ms. Lewinsky Christmas gifts on December 28, 1997, (Clinton GJ, p. 33) and "on other occasions." (Clinton GJ, p. 36). When confronted with his lack of memory at his deposition, the President responded that his statement "I don't recall" referred to the identity of specific gifts, not whether or not he actually gave her gifts. (Clinton GJ, p. 52).

The President also testified at his deposition that Ms. Lewinsky gave him gifts "once or twice." (Clinton Dep., pp. 76–77). Ms. Lewinsky says that she gave a substantial number of gifts to the President. (M.L. 8/6/98 GJ, pp. 27–28, Ex. M.L.–7). This is corroborated by gifts turned over by Ms. Lewinsky to the Independent Counsel and by a letter to the Independent Counsel from the President's attorney. Thus, there is substantial and credible evidence that the President may have testified falsely about being alone with Monica Lewinsky and the gifts he gave to her.

VIII.

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition given in *Jones* v. *Clinton* on January 17, 1998, concerning conversations with Monica Lewinsky about her involvement in the *Jones* case, in violation of 18 U.S.C. 1621 and 1623.

The record tends to reflect the following:

The President was asked at his deposition if he ever talked to Ms. Lewinsky about the possibility that she would testify in the *Jones* case. He answered, "I'm not sure." He then related a conversation with Ms. Lewinsky where he joked about how the *Jones* attorneys would probably subpoena every female witness with whom he has ever spoken. (Clinton Dep., p. 70). He was also asked whether Ms. Lewinsky told him that she had been subpoenaed. The answer was, "No, I don't know if she had been." (Clinton Dep., p. 68).

There is substantial evidence—much from the President's own grand jury testimony—that those statements are false. The President testified before the grand jury that he spoke with Ms. Lewinsky at the White House on December 28, 1997, about the "prospect that she might have to give testimony." (Clinton GJ, p. 33). He also later testified that Vernon Jordan told him on December 19, 1997, that Ms. Lewinsky had been subpoenaed. (Clinton GJ, p. 42). Mr. Jordan also recalled telling

the same thing to the President twice on December 19, 1997, once over the telephone and once in person. (Jordan 5/5/98 GJ, p. 145; Jordan 3/3/98 GJ, pp. 167–170). Despite his deposition testimony, the President admitted that he knew Ms. Lewinsky had been subpoenaed when he met her on December 28, 1997. (Clinton GJ, p. 36). There is substantial and credible evidence that his statement that he was "not sure" if he spoke with Ms. Lewinsky about her testimony is false.

IX.

There is substantial and credible evidence that the President may have endeavored to obstruct justice by engaging in a pattern of activity calculated to conceal evidence from the judicial proceedings in *Jones* v. *Clinton, et al.,* regarding his relationship with Monica Lewinsky, in violation of 18 U.S.C. 1503.

The record tends to establish that on Sunday, December 28, 1997, the President gave Ms. Lewinsky Christmas gifts in the Oval Office during a visit arranged by Ms. Currie. (M.L. 8/6/98 GJ, pp. 149–150). According to Ms. Lewinsky, when she suggested that the gifts he had given her should be concealed because they were the subject of a subpoena, the President stated, "I don't know" or "Let me think about that." (M.L. 8/6/98 GJ, p. 152).

Ms. Lewinsky testified that Ms. Currie contacted her at home several hours later and stated, "I understand you have something to give me" or "the President said you have something to give me." (M.L. 8/6/98 GJ, pp. 154–155). Later that same day, Ms. Currie picked up a box of gifts from Ms. Lewinsky's home. (M.L. 8/6/98 GJ, pp. 156–158; Currie 5/6/98 GJ, pp. 107–108).

The evidence indicates that the President may have instructed Ms. Currie to conceal evidence. The President has denied giving that instruction, and he contended under oath that he advised Ms. Lewinsky to provide all of the gifts to the *Jones* attorneys pursuant to the subpoena. (Clinton GJ, pp. 44–45). In contrast, Ms. Lewinsky testified that the President never challenged her suggestion that the gifts should be concealed. (M.L. 8/26/98 Dep., pp. 58–59).

X.

There is substantial and credible evidence that the President may have endeavored to obstruct justice in the case of *Jones* v. *Clinton, et al.,* by agreeing with Monica Lewinsky on a cover story about their relationship, by causing a false affidavit to be filed by Ms. Lewinsky and by giving false and misleading testimony in the deposition given on January 17, 1998, in violation of 18 U.S.C. 1503.

The record tends to establish that the President and Ms. Lewinsky agreed on false explanations for her private visits to the Oval Office. Ms. Lewinsky testified that when the President contacted her and told her that she was on the *Jones* witness list, he advised her that she could always repeat these cover stories, and he suggested that she file an affidavit. (M.L. 8/6/98 GJ, p. 123). After this conversation, Ms. Lewinsky filed a false affidavit. The President learned of Ms. Lewinsky's affidavit prior to his deposition in the *Jones* case. (Jordan 5/5/98 GJ, p. 24–25).

Subsequently, during his deposition, the President stated that he never had a sexual relationship or affair with Ms. Lewinsky. He further stated that the paragraph in Ms. Lewinsky's affidavit denying a sexual relationship with the President was "absolutely true," even though his attorney had argued that the affidavit covered "sex of any kind in any manner, shape or form." (Clinton Dep., pp. 54, 104).

XI.

There is substantial and credible evidence that the President may have endeavored to obstruct justice by helping Monica Lewinsky to obtain a job in New York City at a time when she would have given evidence adverse to Mr. Clinton if she told the truth in the case of *Jones* v. *Clinton, et al.,* in violation of 18 U.S.C. 1503 and 1512.

The record tends to establish the following:

In October, 1997, the President and Ms. Lewinsky discussed the possibility of Vernon Jordan assisting Ms. Lewinsky in finding a job in New York. (M.L. 8/6/98 GJ, pp. 103–104). On November 5, 1997, Mr. Jordan and Ms. Lewinsky discussed employment possibilities, and Mr. Jordan told her that she came "highly recommended." (M.L. 7/31/98 Int., p. 15; e-mail from Lewinsky to Catherine Davis, 11/6/97).

However, no significant action was taken on Ms. Lewinsky's behalf until December, when the *Jones* attorneys identified Ms. Lewinsky as a witness. Within days, after Mr. Jordan again met with Ms. Lewinsky, he contacted a number of people in the private sector who could help Ms. Lewinsky find work in New York. (Jordan 3/3/98 GJ, pp. 48–49).

Additional evidence indicates that on the day Ms. Lewinsky signed a false affidavit denying a sexual relationship with the President, Mr. Jordan contacted the President and discussed the affidavit. (Jordan 5/5/98 GJ, pp. 223–225). The next day, Ms. Lewinsky interviewed with MacAndrews & Forbes, an interview arranged with Mr. Jordan's assistance. (M.L. 8/6/98 GJ, pp. 205–206). When Ms. Lewinsky told Mr. Jordan that the interview went poorly, Mr. Jordan contacted the CEO of MacAndrews & Forbes. (Perelman 4/23/98 Dep., p. 10; Telephone Calls, Table 37, Call 6). The following day, Ms. Lewinsky was offered the job, and Mr. Jordan contacted the White House with the message "mission accomplished." (Jordan 5/28/98 GJ, p. 39).

In sum, Mr. Jordan secured a job for Ms. Lewinsky with a phone call placed on the day after Ms. Lewinsky signed a false affidavit protecting the President. Evidence indicates that this timing was not coincidental.

XII.

There is substantial and credible evidence that the President may have testified falsely under oath in his deposition given in *Jones* v. *Clinton, et al.* on January 17, 1998, concerning his conversations with Vernon Jordan about Ms. Lewinsky, in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish that Mr. Jordan and the President discussed Ms. Lewinsky on various occasions from the time she was served until she fired Mr. Carter and hired Mr. Ginsburg. This is contrary to the President's deposition testimony. The President was asked in his deposition whether anyone besides his attorney told him that Ms. Lewinsky had been served. "I don't think so," he responded. He then said that Bruce Lindsey was the first person who told him. (Clinton Dep., pp. 68–69). In the grand jury, the President was specifically asked if Mr. Jordan informed him that Ms. Lewinsky was under subpoena. "No sir," he answered. (Clinton GJ, p. 40). Later in that testimony, when confronted with a specific date (the evening of December 19, 1997), the President admitted that he spoke with Mr. Jordan about the subpoena. (Clinton GJ, p. 42; Jordan 5/5/98 GJ, p. 145; Jordan 3/3/98 GJ, pp. 167–170). Both the President and Mr. Jordan testified in the grand jury that Mr. Jordan informed the President on January 7 that Ms. Lewinsky had signed the affidavit. (Clinton GJ, p. 74; Jordan 5/5/98 GJ, 222–228). Ms. Lewinsky said she too informed the President of the subpoena. (M.L. 8/20/98 GJ, p. 66).

The President was also asked during his deposition if anyone reported to him within the past two weeks (from January 17, 1998) that they had a conversation with Monica Lewinsky concerning the lawsuit. The President said, "I don't think so." (Clinton Dep., p. 72). As noted, Mr. Jordan told the President on January 7, 1998, that Ms. Lewinsky signed the affidavit. (Jordan 5/5/98 GJ, pp. 222–228). In addition, the President was asked if he had a conversation with Mr. Jordan where Ms. Lewinsky's name was mentioned. He said yes, that Mr. Jordan mentioned that she asked for advice about moving to New York. Actually, the President had conversations with Mr. Jordan concerning three general subjects: Choosing an attorney to represent Ms. Lewinsky after she had been subpoenaed (Jordan 5/28/98 GJ, p. 4); Ms. Lewinsky's subpoena and the contents of her executed affidavit (Jordan 5/5/98 GJ, pp. 142–145; Jordan 3/3/98 GJ, pp. 167–172; Jordan 3/5/98 GJ, pp. 24–25, 223, 225); and Vernon Jordan's success in procuring a New York job for Ms. Lewinsky. (Jordan 5/28/98 GJ, p. 39).

XIII.

There is substantial and credible evidence that the President may have endeavored to obstruct justice and engage in witness tampering in attempting to coach and influence the testimony of Betty Currie before the grand jury, in violation of 18 U.S.C. 1512.

The record tends to establish the following:

According to Ms. Currie, the President contacted her on the day he was deposed in the *Jones* case and asked her to meet him the following day. (Currie 1/27/98 GJ, pp. 65–66). The next day, Ms. Currie met with the President, and he asked her whether she agreed with a series of possibly false statements, including, "We were never really alone," "You could always see and hear everything," and "Monica came on to me and I never touched her, right?" (Currie 1/27/98 GJ, pp. 71–74). Ms. Currie stated that the President's tone and demeanor indicated that he wanted her to agree with these statements. (Currie 1/27/98 GJ, pp. 73–74). According to Ms. Currie, the President called her into the Oval Office several days later and reiterated his previous statements using the same tone and demeanor. (Currie 1/27/98 GJ, p. 81). Ms. Currie later stated that she felt she was free to disagree with the President. (Currie 7/22/98 GJ, p.23).

The President testified concerning those statements before the grand jury, and he did not deny that he made them. (Clinton 8/17/98 GJ, pp. 133–139). Rather, the President testified that in some of the statements he was referring only to meetings with Ms. Lewinsky in 1997, and that he intended the word "alone" to mean the entire Oval Office complex. (Clinton 8/17/98 GJ, pp. 133–139).

XIV.

There is substantial and credible evidence that the President may have engaged in witness tampering by coaching prospective witnesses and by narrating elaborate detailed false accounts of his relationship with Ms. Lewinsky as if those stories were true, intending that the witnesses believe the story and testify to it before a grand jury, in violation of 18 U.S.C. 1512.

The record tends to establish the following:

John Podesta, the President's deputy chief of staff, testified that the President told him that he did not have sex with Ms. Lewinsky "in any way whatsoever" and "that they had not had oral sex." (Podesta 6/16/98 GJ, p. 92). Mr. Podesta repeated these statements to the grand jury. (Podesta 6/23/98 GJ, p. 80).

Sidney Blumenthal, an assistant to the President, said that the President told him more detailed stories. He testified that the President told him that Ms. Lewinsky, who the President claimed had a reputation as a stalker, came at him, made sexual demands of him, and threatened him, but he rebuffed her. (Blumenthal 6/4/98 GJ, pp. 46–51). Mr. Blumenthal further testified that the President told him that he could recall placing only one call to Ms. Lewinsky. (Blumenthal 6/25/98 GJ, p. 27). Mr. Blumenthal mentioned to the President that there were press reports that he, the President, had made telephone calls to Ms. Lewinsky, and also left voice mail messages. The President then told Mr. Blumenthal that he remembered calling Ms. Lewinsky after Betty Currie's brother died. (Blumenthal 6/4/98 GJ, p. 50).

XV.

There is substantial and credible evidence that the President may have given false testimony under oath before the Federal grand jury on August 17, 1998, concerning his knowledge of the contents of Monica Lewinsky's affidavit and his knowledge of remarks made in his presence by his counsel in violation of 18 U.S.C. 1621 and 1623.

The record tends to establish the following:

During the deposition, the President's attorney attempted to thwart questions pertaining to Ms. Lewinsky by citing her affidavit and asserting to the court that the affidavit represents that there "is absolutely no sex of any kind, manner, shape or form, with President Clinton." (Clinton Dep., p. 54). At several points in his grand jury testimony, the President maintained that he cannot be held responsible for this representation made by his lawyer because he was not paying attention to the interchange between his lawyer and the court. (Clinton GJ, pp. 25–26, 30, 59). The videotape of the deposition shows the President apparently listening intently to the interchange. In addition, Mr. Clinton's counsel represented to the court that the President was fully aware of the affidavit and its contents. (Clinton Dep., p. 54).

The President's own attorney asked him during the deposition whether Ms. Lewinsky's affidavit denying a sexual relationship was "true and accurate." The President was unequivocal; he said, "This is absolutely true." (Clinton Dep., p. 204). Ms. Lewinsky later said the affidavit contained false and misleading statements. (M.L. 8/6/98 GJ, pp. 204–205). The President explained to the grand jury that Ms. Lewinsky may have believed that her affidavit was true if she believed "sexual relationship" meant intercourse. (Clinton GJ, pp. 22–23). However, counsel did not ask the President if Ms. Lewinsky thought it was true; he asked the President if it was, in fact, a true statement. The President was bound by the court's definition at that point, and under his own interpretation of that definition, Ms. Lewinsky engaged in sexual relations. An affidavit denying this, by the President's own interpretation of the definition, is false.

That is my report to this committee. The guiding object of our efforts over the past three weeks has been to search for the truth. We felt it our obligation to follow the facts and the law wherever they might lead, fairly and impartially. If this committee sees fit to proceed to the next level of inquiry, we will continue to do so under your guidance.

Mr. HYDE. Thank you, Mr. Schippers. You finished on time. That is especially commendable.

Mr. Lowell, you have an hour.

The Chair, in response to some questions and complaints by the Democrats, and I must say I find them with some substance to them, object to Mr. Schippers' remarks as a citizen. He was here testifying as special counsel to the majority and not as a citizen. So those remarks he made at the end which do not refer to the record, to the Starr referral, will be stricken from the record. That will be the order of the Chair.

Mr. Lowell, any time you are ready.

STATEMENT OF ABBE D. LOWELL, MINORITY CHIEF INVESTIGATIVE COUNSEL

Mr. LOWELL. I am ready.

Chairman Hyde, Ranking Member Conyers, members of the committee, on behalf of the full minority staff, I appreciate the opportunity to address this committee and to present what are the very different approaches and different analyses between us and the majority staff.

In the time that I have, I will set out the enormous differences in approach between the majority staff's and the minority staff's analysis. I will point to some of the problems caused by the committee's not having begun this process with a discussion of the constitutional standard of impeachment. I will bring the committee's attention to why the huge gaps between the charges in the referral and now as proposed by majority counsel and the actual evidence support the type of fair, focused and expeditious review being proposed by the Democratic members, and we will recommend that part of the committee's work should include evaluating the weight and the credibility of the evidence because of the conduct of the Independent Counsel.

To begin with, we differ from our staff colleagues as we do not believe that this committee or the House of Representatives is supposed to be an extension of the Office of the Independent Counsel. In the majority counsel's presentation, I am sure the committee has heard that in just the 2 weeks there has been to actually review the evidence, majority counsel has now walked away from two of the grounds submitted by the Independent Counsel and has rewritten or added four others by simply subdividing the charges.

As the committee considers my and my counterpart's summaries of the evidence and what type of inquiry is needed, we offer this observation: The evidence that Congress has received from the Independent Counsel on the Lewinsky matter alone comes after he spent 9 months with a large staff of trained investigators and prosecutors and $4 million. It is a one-sided presentation by a prosecutor. The Independent Counsel's evidence includes 22 interviews or grand jury appearances by Monica Lewinsky, 9 by Betty Currie, 5 by Vernon Jordan and 20 by Linda Tripp.

If, after this much time by this many experienced attorneys spending this much money and conducting these many interviews, the evidence he sent does not support the charges he makes, how does renaming or relisting or further subdividing the grounds using that same evidence, as majority counsel has just done, make the case any stronger or the issues any clearer?

We also seem to differ because we see the committee's constitutional and historic task quite differently from the type of listing of

laws and statutes that the Independent Counsel's referral contains and as majority counsel has just done. The determinations of whether to begin an impeachment inquiry and what type of inquiry to conduct are vastly different than the determination of whether there is evidence of a violation of law or statute; in other words, the Independent Counsel's referral and the majority counsel's presentation suggest that there is some kind of equal sign between a violation by a President of any number of laws in the statute books on the one side and the impeachment provisions of Article II, Section 4 of the Constitution on the other. We read the precedents differently and see that initiating an impeachment process for only the third time in American history takes a far higher threshold than simply making a laundry list of laws a President may have violated. As Mr. Berman said this morning, not all offenses are high crimes and misdemeanors and not all high crimes and misdemeanors come from criminal conduct.

In our review of the evidence contained in the 18 boxes, which includes every piece of evidence that our majority counsel has just detailed, we have been particularly guided by the gravity impressed on us by our own staff predecessors 24 years ago when they wrote:

"Because impeachment of the President is a grave step for the Nation, it is to be predicated upon conduct seriously incompatible with either the constitutional form and principles of government or the proper performance of constitutional duties of the presidential office."

Unlike some, we have also kept one central point in mind: We have reviewed the referral as it was sent, not as a set of theoretical questions about what is or is not an impeachable offense in a vacuum, but a specific set of eleven grounds tied closely with the facts as the Independent Counsel has presented them.

And even though majority counsel has just attempted to add additional grounds or to rename others, they too will fit into the few categories for the committee that I will propose in a few minutes.

As to the referral itself, we have seen or heard the media ask members the largely rhetorical question: "Are you saying that lying under oath or obstruction of justice is not an impeachable offense?"

This may be the basis for excellent classroom debate, but it begs the issue in the actual Starr referral. The question the committee will be called upon to answer is whether the allegations of lying under oath, obstruction and tampering or even as majority counsel renames them as misprision of a crime, false statements, or even conspiracy, tied to the specific facts alleged in the referral and the evidence constitute grounds for proceeding, because wrenching the individual words "perjury," "false statements," "obstruction," or "tampering" from their factual context is not consistent with the historical precedents concerning the constitutional framework for an impeachment proceeding.

And, another defining difference between us and the majority staff is that we agree with our Democratic members who have stated so articulately that the process thus far is backwards. The committee is considering whether to open what type of actual impeachment inquiry without having spent a single minute discussing what conduct by a President rises to an impeachable offense.

This, members of the committee, is the equivalent of a ship's captain leaving on a difficult and uncharted voyage, hoping to find his or her compass somewhere along the way.

Moreover, the entire process has now been started by a referral from an Independent Counsel who states his role "is not to determine whether the President's actions warrant impeachment," but then proceeds to usurp the constitutional role of the House by including eleven reasons why it should do just that.

In this regard, the committee should compare the proceedings today and those 24 years ago; then Special Prosecutor Leon Jaworski wrote what has been called a "road map" of evidence that was neither accusatory nor conclusory; today, the Independent Counsel has written 445 pages of conclusions that read like an indictment. One more important difference to consider is that "road map" written by Mr. Jaworski remains secret to this very day. Mr. Starr's referral and nearly 7,000 pages of evidence can be dialed up on the Internet.

Were the committee to proceed as the Democratic members have been urging, to develop a shared understanding of what constitutes an impeachable offense, the committee might save time and resources because at the end of that consideration, the committee might find that none of the alleged violations, no matter how they were originally named by the Independent Counsel or renamed by majority counsel, and all of which are based on the President's private relationship with Monica Lewinsky, would rise to the constitutional threshold.

Without having what will be the committee's deliberations on this important issue, the staff simply kept in mind the broadest and the least forgiving definition of the constitutional requirement of "high crimes and misdemeanors," and when we did that, this is what we saw.

From the beginning, the framers said that they had to involve "great and dangerous offenses to subvert the Constitution," the quote from George Mason.

Or that, as Alexander Hamilton stated, they require there to be "injuries done immediately to the society itself."

Or, as Republican Ranking Member Edward Hutchinson said, when reviewing the conduct of President Nixon, the offenses had to be "high in the sense that they were crimes directed against or having great impact upon the system of government itself."

And even as the majority staff chooses to rewrite the Starr referral, they, as we, had a ready reference point which they have apparently rejected.

One of the lesser known offenses alleged against President Nixon outside of the Watergate cover-up was that he had purposely and knowingly engaged in tax evasion, including allegations that there was backdating of documents and a false filing under oath to the IRS.

With the Democrats in the majority and the Republicans in the minority judging a Republican President, the committee voted 26 to 12 that these acts by the President, while perhaps constituting offenses, even criminal offenses, even felonies, were not grounds for impeachment. The Democratic alternative, which tries to put the cart of establishing standards back behind the horse of evaluating

evidence understands this basic question: If President Nixon's alleged lies to the IRS about his taxes were not grounds for impeachment in 1974, how then are alleged lies about President Clinton's private sexual relationship with Ms. Lewinsky grounds in 1998?

The Independent Counsel's referral is composed of 11 separate charges. Majority counsel has already seen fit to reject one or two of these and he has renamed five or six others. But it is not the number of counts or grounds that matter, it is the underlying conduct. In our law, there is a prosecutor's strategy, which courts routinely disapprove, by which they divide what they believe to be a single offense into many different charges. They do this to make a case look more serious or foreboding.

This is very much what the Independent Counsel has done and now what majority counsel has adopted as his approach. The Independent Counsel can take the same conduct by the President and, with all the laws that exist on the books, call them 1 offense, 10 offenses or 100 offenses. That is what prosecutors do.

But no matter how many different grounds were sent by the Independent Counsel and no matter how majority counsel may further divide them up or rename them in order to pile on additional charges, they fit into three distinct claims: first, that the President lied under oath about the nature of a sexual relationship with Monica Lewinsky; second, that he committed obstruction when he sought others to help him conceal that inappropriate relationship; and third, that he abused the Office of the Presidency by taking steps to hide that relationship.

So no matter how majority staff may hope to strengthen their recommendation by finding new offenses to tag on, one basic allegation, that is, that the President was engaged in an improper relationship which he did not want disclosed, it is the core charge that Mr. Starr and the majority staff suggest triggers this constitutional crisis.

Some reasons that are offered to support an open-ended inquiry are that the evidence is dense, the evidence supports the charges, and that those charges are serious. The minority staff's review suggests that the committee's inquiry can be as expeditious as the Democrats propose because most of the evidence has already been obtained, and that evidence usually does not support the allegations that have been made.

Time does not permit me to point out how each and every allegation of an offense stated by the Independent Counsel or now relabeled by majority counsel is not as they contend it to be. And, in the interest of time, I have but will not read out loud the citations to pages in the actual evidence. But I can take the most serious of the charges to demonstrate the serious gap between allegations and proof.

First, as to the allegations that the President lied under oath, whether you call them "lying" or "perjury" or "false statements" or whatever, half the alleged grounds in the Independent Counsel's referral and now seven of the grounds renamed by the majority staff are that the President lied about his relationship with Monica Lewinsky. It is not the actual lie about the relationship that rises to an impeachable offense; I suppose the Independent Counsel agrees that people lie about their improper relationships, but it is

the fact that the lies occurred during a civil lawsuit or before the Independent Counsel's own grand jury that, according to the charges, constitutes the offense.

Majority staff's approach, taking up where Ken Starr left off, would have the committee continue to delve into even more details concerning the physical relationship between the President and Ms. Lewinsky so that, I suppose, the committee could determine who is telling the truth about who touched who, where and when; however, this unseemly process does not have to occur.

The better approach would be to take the Independent Counsel at its charge. If it was the fact that the President lied at his Paula Jones deposition that creates the possibly impeachable offense, then the inquiry required would be to determine the importance or impact of that statement in that specific case.

And this is what the evidence shows: These were misstatements about a consensual relationship made during a case alleging nonconsensual harassment. When Judge Webber Wright of Arkansas ruled on January 29, 1998 that the evidence about Ms. Lewinsky was "not essential to the core issues of the case" and when she then ruled on April 1 that no matter what the President did with any other woman, Ms. Jones herself had not proven that she had been harmed by what she alleged, the judge was giving this committee the ability to determine that the President's statements, whether truthful or not, were not of the legal importance suggested by Mr. Starr, let alone the grave constitutional significance to support impeachment. And a prolonged inquiry is not required to see that proper context.

Furthermore, the referral is quick to conclude that the President committed a serious offense by his interpretation of what did and did not constitute "sexual relations," in a definition invented for a deposition that is the type of gobbledygook that gives lawyers our bad name. But the committee will never read in the 445-page referral what the full evidence shows, that this definition just happened to be shared by Ms. Lewinsky herself. In the transcript of her taped October 3, 1997, conversation with Linda Tripp, Ms. Lewinsky says that she was not having sex with the President because they were not engaged in intercourse. And even a Paula Jones former attorney—after all, it was Paula Jones' attorneys who created that strained definition—agreed in a television interview that the definition would not necessarily include oral sex.

Members of the committee, no one has suggested that the President's answers, even given his explanation that he was "trying to be truthful but not particularly helpful" in what he thought was a lawsuit being run by his political enemies, was not misleading, was not evasive, was not technical. But seen in their entire context of the evidence, they do not have the constitutional impact that the Independent Counsel and majority counsel have just suggested.

Some have raised the impeachment of judges, including Judge Nixon, when they have been convicted for perjury, as a precedent for this committee; but members of this committee especially know that the lies in those cases had to do with the discharge of those judges' duties and that the standards for impeaching judges appointed for life are not the same as for reversing presidential elections.

And in this case, these were statements, the evidence shows the intent of which was to prevent the disclosure of an improper consensual relationship, not to interfere with allegations made by Paula Jones that she had been the subject of unwanted harassment. To put the evidence another way: Is there anyone involved in such an improper relationship who ever wanted it disclosed, and does anyone believe that the President would have revealed his improper relationship with Ms. Lewinsky had the *Paula Jones* case not been pending at the time?

Since the answers to these questions are obvious, the inquiry is not on whether his statements were or were not truthful, but what were their context, what were their impact and what were their subject matter? This, too, the committee can resolve expeditiously.

As the committee considers the charges that the President lied under oath, or however they may now be renamed by the majority staff, remember that one example of why the Independent Counsel would have Congress trigger this inquiry is that the President stated his relationship with Ms. Lewinsky started in 1996, when the Independent Counsel contends it started in late 1995. For the difference of these few months, a constitutional crisis is not warranted.

Turning to the obstruction allegations, because of its reminiscence to the Watergate proceeding, the phrase "obstruction of justice" is one which many have stated is the most egregious ground alleged in the Starr referral and why it was so emphasized by majority counsel who now splits the 4 contained in the Starr referral, counts 5, 6, 7 and 9 there, into his counts 2, 3, 4, 9, 10, 11, 13, and 14. But they are the same.

Just as the committee cannot divorce the phrase "lying under oath" from the facts about which the President is alleged to have lied, so too it should not divorce the allegations of obstruction, or whatever the majority staff chooses to call them, from the actual evidence.

Perhaps the three widest quoted obstruction charges made by the Independent Counsel are that: First, the President initiated a return of the gifts he had sent Ms. Lewinsky so that they would not be discovered in the *Paula Jones* case; second, he tried to have Ms. Lewinsky submit a false affidavit; and, third, he sought to tamper with the testimony of Ms. Currie. But all of these are undercut by the evidence. As to the gifts, Mr. Starr's referral states "Lewinsky and the President discussed the possibility of removing some gifts from her possession."

Majority counsel contends this to be a potential ground for impeachment and so too calls it obstruction. Certainly this would be a serious charge if true. The actual evidence, however, shows it is not true, no matter how cast as the Independent Counsel first did or as majority staff will label it now. Read the actual testimony and the committee will see that Ms. Lewinsky admits that she was the one who raised the gift issue with the President, not vice versa, and his response was not encouraging. He said, "Let me think about it."

This and his having already told her she would have to turn over whatever she had hardly can support a charge of obstruction or misprision or conspiracy as a criminal offense, let alone to justify

the majority counsel's conclusion of an impeachable one. Read further and the committee will see that contrary to the conclusion that the President was worried about gifts, he actually gave Ms. Lewinsky additional gifts after she had expressed concern about them and after he knew they were subpoenaed—hardly the acts of a man set on obstruction.

Finally, where the actual referral would indicate that it was the President or Ms. Currie who initiated the gift idea, Ms. Currie indicated that the idea came from Ms. Lewinsky. Not satisfied with this answer that did not match the charge that they were preparing, the Independent Counsel then proposed to Ms. Currie that her memory differed from Ms. Lewinsky. When Ms. Currie said that that "might" be the case, that one word "might" was all the Independent Counsel needed to make his charge. But read in its entirety, Ms. Currie's testimony is clear and no leading question or quotation out of context can change the one important thing about her testimony: The President did not ask her to call for or retrieve the gifts.

As to the affidavit, the Independent Counsel charges and majority counsel would argue that more inquiry is needed because the evidence is that the President sought Ms. Lewinsky to submit a false affidavit in the *Jones* case; a serious charge, which again is not contained in the evidence. There is no doubt that the President and Ms. Lewinsky discussed the affidavit and no doubt that neither wanted her to have to testify in a case concerning sexual harassment about what was their improper but entirely consensual relationship. The way Ms. Lewinsky puts it was, "It was a personal one and none of Paula Jones' business."

Wanting an affidavit to avoid this consensual relationship from being exposed, and seeking a false affidavit are not the same, even though the Starr referral jumps right over this difference. And as to the only facts that would matter, both the President and Ms. Lewinsky agreed that he never asked her to file a false affidavit, and that the President did not even want to see the affidavit once it was finished.

And even though the Independent Counsel tries to enhance his charge that the President sought Ms. Lewinsky to lie by "assisting her job search to 'keep her on the team'", hasn't everyone now seen that the job search began by others than the President long before the *Jones* case issue arose, that it was started to remove Ms. Lewinsky from the White House before the election, that Linda Tripp, not the President, suggested getting Vernon Jordan involved, that Ms. Currie pushed getting her then friend a job because she felt badly about Ms. Lewinsky having been transferred, and finally that Ms. Lewinsky, even though she was never asked by the Independent Counsel, made sure she did not finish her testimony before stating "No one asked me to lie and I was never promised a job for my silence."

And committee members, please note this: Despite the Independent Counsel having room in his report for pages and pages of unnecessary specifics, quoting directly from Ms. Lewinsky about where, when, and how she touched the President, he could not find the space in his 450 pages to quote her exact uncompromising,

clear and completely dispositive words on this key issue: "No one asked me to lie and I was never promised a job for my silence."

And as to Betty Currie, while the charge—the Independent Counsel may call it obstruction, majority counsel calls it something different—has been made that the President was trying to tamper with the testimony of Betty Currie, you can look through the 445 page referral and never see the Independent Counsel advise you that Ms. Currie was not listed to be deposed and was not on a witness list in the *Jones* case or even that the President obviously did not know that Linda Tripp had come to the Office of the Independent Counsel to start this investigation. Ms. Currie then was not a "witness" who could have been tampered with.

What the full transcripts of Ms. Currie, the President and the White House staff and reference to the time frame of January 18th do show is that the President's worry was not Ms. Currie being a witness but was the fact that the questions and answers at his deposition were going to be leaked to the press and create a media eruption. The evidence shows that is exactly what his motives were. Because just a few hours after his testimony, the Lewinsky questions and answers were on the Internet and the subject of the next day's, Sunday's, news shows.

And while the Independent Counsel and now the majority staff contend that the President sought to direct Ms. Currie about what to say, Ms. Currie says just the opposite. Her being called back and back and back to the Independent Counsel's grand jury and her now being called before this committee and asked the questions again and again and again did not then and will not now change the facts.

Members of the committee, counts 10 and 11 in the Independent Counsel's referral are in many ways the most illustrative of that referral and should be seen by you to undermine his entire presentation. They have now, as I hear my colleague, been dropped by majority counsel and staff.

Not content—and those are the allegations of abuse of office—not content with charging lying under oath, witness tampering and obstruction of justice about the President's attempt to hide his private relationship, the Independent Counsel has asked the committee to recast these same allegations as an abuse of office, just as majority counsel wants to rename his charges. The term "abuse of office" does indeed invoke the memory of President Nixon's wrongdoing. But the clothes of Watergate do not fit the body of the conduct detailed in this referral.

In effect, grounds 10 and 11 charge that the President lied to his staff or to the people around him about the same inappropriate relationship with Ms. Lewinsky knowing that they might repeat those misstatements and then that the President violated his oath of office because he and his attorneys tried to protect his constitutional rights by asserting privileges of law, including executive privilege and the attorney-client privilege given to presidents and all Americans alike.

Even majority counsel did not take long to dismiss these ideas, as his 15 charges do not include this odd notion of an abuse of office for those reasons, and I now assume that the majority will not pursue those counts.

But as to the misstatements to the staff that might be repeated in the grand jury or even to the public, Independent Counsel's referral continues to divide the charge from what the statement was about. This was not an attempt by a President to organize his staff to spread misinformation about the progress of the war in Vietnam. It was not about a break-in of the Democratic headquarters at the Watergate or even about how funds from arms sales in Iran were diverted to aid the Contras in Nicaragua. This was a President repeating to his staff the same denial of an inappropriate and extremely embarrassing relationship that he had already denied to the public. However wrong the relationship or misleading the denial, it is not nearly the same as those other examples and cannot stand on the same constitutional footing.

As to the ground for impeachment that the President had the audacity to assert privileges in litigation, it is literally shocking that the Independent Counsel, himself a former appellate judge and chief lawyer for the United States before the Supreme Court, would even suggest that the assertion of an evidentiary privilege by the President, on the advice of his lawyers and White House counsel, that was found to exist by a judge in question could ever, under any circumstances, be grounds for an impeachment.

I have heard the Independent Counsel say, as majority counsel just did some minutes ago, that the President should not be above the law. And yet the referral would place him below the law that gives every American the right to assert legally accepted privileges without fearing being thrown out of his job. So if these were so easily dismissed by the majority staff, why would the Independent Counsel suggest these almost frivolous bases?

As the committee decides on the scope of its work, one other issue should be included that may answer that question. We have pointed to just some of the times when the Independent Counsel makes a statement not supported by the evidence he sent or then jumps to a guilty inference when a more innocent explanation was far more obvious. A full and fair inquiry should therefore consider whether numerous actions by the Independent Counsel undermine his claim to impartiality and fairness. Considering this would not be an attempt to divert attention from the President's conduct or for delay. Excesses by the Independent Counsel or any gatherer of the evidence on which you are going to rely, as some have contended is not incidental or tangential. How does the committee know that that is not the case? The Independent Counsel said so himself.

When Monica Lewinsky's testimony was released by the committee, it was Mr. Starr himself who wrote the committee on September 25, 1998, and this is what he said: "At the time we submitted our referral, we reviewed these questions [about his conduct] as incidental and tangential. Nonetheless, the issue has now been raised publicly and appears to bear on the substantiality and credibility of the information we have provided to the House in our referral."

We agree with the Independent Counsel that his conduct bears on the substantiality and credibility of the information he gathered and transmitted. Consequently, on the Independent Counsel's own

invitation to the committee, this, too, should be the subject of its review, and there are at least three important issues.

First, after 4 years of investigation, the part of the case which has caused this impeachment referral was the Lewinsky matter. However, it is not clear whether the Independent Counsel jumped the gun on getting into this area based on the exaggerated and perhaps even manipulated statements of Linda Tripp. It may have begun its dealings with Ms. Tripp earlier than it has said before. It accepted Linda Tripp's apparently unlawfully-obtained tapes and then wired her to trap Ms. Lewinsky before it was given authority by the court to get into these matters.

Second, once it did get involved, its dealings with Ms. Lewinsky, when the Independent Counsel staff detained her for 10 hours, despite her asking for a lawyer; with her mother, who was brought to tears by their conduct; with Ms. Currie, who they returned to the grand jury again and again, with leading and suggestive questions; and with other witnesses, all raise the issue of the quality of the evidence that they obtained and have now used as the foundation for their referral. Because as the weight of evidence diminishes, so must the conclusions the Independent Counsel has done, so, too, the committee must evaluate the quality and substantiality of the evidence.

Finally, if the committee compares the charges and the main points of evidence from the 445-page referral with the news stories that appeared between January and August, it will confirm that not one charge, not one allegation and not one piece of evidence, from the Tripp tapes to the stained blue dress, was not leaked to the press. The Independent Counsel has been asked to show cause why it should not be held in contempt for leaking, and the outcome of that determination, when it is made, as Mr. Starr's invitation would seem to agree, bears on the substantiality and on the credibility of the evidence.

In that same vein, members of the committee, consider this: When the referral was finally delivered to the House of Representatives on September 9, 1998, and it was locked in a secure room, in a matter of minutes the media reported on how many pages and how many counts it contained. Certainly the committee knows that that information could not have come from Capitol Hill where the boxes remained under seal.

Chairman Hyde, Ranking Member Conyers and members, for only the third time in the 200-year history of our country has an impeachment process been invoked. As members on both sides of the aisle have said, this is not a step that should be undertaken lightly; and it is one, as the Democratic members have argued, that should not lead to a fishing expedition to find something better than that which has been sent in the original referral.

The staff has been asked to make a preliminary evaluation of the charges and of the evidence. This preliminary review indicates that the charges are often overstated, based on strained definitions of what is an offense under the law, are often not supported by the actual evidence in the boxes and are sometimes, as with the case of counts 10 and 11 in the referral, the product of zeal to make a case rather than to state the law.

As the minority staff, we have fewer resources than our counterparts, just as the majority has more votes than the minority to pass whatever inquiry it believes is right. But it should be the weight of the evidence and not the number of votes that matter.

Congresswoman Lofgren provided the staff with some history for us to read. In one piece, Alexander Hamilton was called upon to explain the impeachment process to the people being asked to adopt the Constitution, and this is what he said: "Prosecutions of impeachment will seldom fail to agitate the passions of the whole community and to divide it into parties more or less friendly or inimical to the accused. In many cases, it will connect itself with the preexisting factions. And in such cases there will always be the danger that the decision will be regulated more by the comparative strength of the parties than by real demonstrations of innocence or guilt."

As the committee considers the version of events the Independent Counsel suggests might rise to impeachable offenses and then decides between the two alternative resolutions being presented, Hamilton's words seem particularly germane.

Mr. Chairman, Mr. Conyers and members of the committee, on behalf of the minority staff, we appreciate your indulging us the time and will stand ready today and in the future to answer your questions.

Mr. HYDE. Thank you very much.

[The statement of Mr. Lowell follows:]

PREPARED STATEMENT OF ABBE D. LOWELL, MINORITY CHIEF INVESTIGATIVE COUNSEL

ORAL PRESENTATION

I. INTRODUCTION—MAJORITY AND MINORITY STAFF APPROACHES DIFFER MARKEDLY

—Chairman Hyde, Ranking Member Conyers, and members of the committee, on behalf of the full minority staff, I appreciate the opportunity to address the committee to present what are the very different approaches and analyses between us and the majority staff

—in the time I have, I will set out the enormous differences in approach between the majority staff's and minority staff's analysis, point to some of the problems caused by the committee's not having begun this process with a discussion of a constitutional standard for impeachment, bring the committee's attention to why the huge gaps between the charges in the referral and now as proposed by majority counsel and the actual evidence support the type of fair, focused, and expeditious review being proposed by the Democratic members, and recommend that part of the committee's work should include evaluating the weight and credibility of the evidence because of the conduct of the Independent Counsel

—to begin with, we differ from our staff colleagues as we do not believe that this committee or the House of Representatives is supposed to be an extension of the Office of the Independent Counsel; in majority counsel's presentation, I am sure the committee has heard that in the 2 weeks there has been to actually review the evidence, majority counsel has now walked away from two grounds by the OIC and has re-written or added four others simply by sub-dividing the charges

—as the committee considers my and my counterpart's summaries of the evidence and what type of inquiry is needed, we offer this observation: the evidence that Congress has received from the Independent Counsel on the Lewinsky matter alone comes after he spent 9 months, with a large staff of trained investigators and prosecutors, and $4 million; it is a one-sided presentation by a prosecutor; the OIC review included 22 interviews or grand jury appearances by Monica Lewinsky; 9 by Betty Currie; 5 by Vernon Jordan and 20 by Linda Tripp;

—if, after this much time by this many experienced attorneys spending this much money, and conducting these many interviews, the evidence he sent does not sup-

port the charges he makes, how does renaming or relisting or further sub-dividing the grounds using the same evidence, as majority counsel has just done, make the case any stronger or the issues any clearer

—we also seem to differ because we see the committee's constitutional and historic task quite differently from the type of listing of laws and statutes that the OIC's referral contains and the majority counsel has just done—the determinations of whether to begin an impeachment inquiry and what kind of inquiry to conduct are vastly different than the determination of whether there is evidence of a violation of a law or statute; it other words, the OIC's referral and majority counsel's presentation suggest that there is some kind of equal sign between a violation by a President of any of a number of laws in statute books on one side and the impeachment provisions of Article 11, Section 4 of the Constitution on the other; we read the precedents differently and see that initiating an impeachment process for only the third time in American history takes a far higher threshold than simply making a laundry list of laws a President might have violated; as Mr. Berman stated, "not all offenses are high crimes and misdemeanors, and not all high crimes and misdemeanors come from criminal conduct"

—in our review of the evidence contained in the 18 boxes sent, we have been particularly guided by the gravity impressed on us by our own staff predecessors 24 years ago—who wrote

> BECAUSE IMPEACHMENT OF THE PRESIDENT IS A GRAVE STEP FOR THE NATION, IT IS TO BE PREDICATED UPON CONDUCT SERIOUSLY INCOMPATIBLE WITH EITHER THE CONSTITUTIONAL FORM AND PRINCIPLES OF GOVERNMENT OR THE PROPER PERFORMANCE OF CONSTITUTIONAL DUTIES OF THE PRESIDENTIAL OFFICE. *Impeachment Inquiry Staff Grounds Memo at 26–27*

—unlike some, we have also kept one central point in mind—we reviewed the referral as it was sent—not a set of theoretical questions about what is or is not an impeachable offense in a vacuum, but a specific set of 11 grounds tied closely with the facts as the Independent Counsel has presented them

—and, even though majority counsel has just attempted to add additional grounds, or rename others, they too will fit into the few categories for committee consideration that I will propose in a few minutes

—as to the referral itself, we have seen or heard the media ask members the largely rhetorical question: "Are you saying that lying under oath or obstruction of justice is not an impeachable offense?"

—this may be the basis for excellent classroom debate, but it begs the issue in the actual Starr referral; the question the committee will be called upon to answer is whether the allegations of lying under oath, obstruction, and tampering, or even if majority counsel renames them as misprision of a crime, false statements, or even conspiracy, TIED TO THE SPECIFIC FACTS ALLEGED IN THE STARR REFERRAL, constitute grounds for proceeding

—wrenching the individual words "perjury," "false statements," "obstruction," "misprision," or "tampering" from their factual context is not consistent with the historical precedents concerning the constitutional framework for impeachment proceedings

II. STANDARD—THE CART BEFORE THE HORSE.

—and another defining difference between us and majority staff is that we agree with our Democratic members who have stated so articulately that the process thus far is backwards—the committee is considering whether to open what type of actual impeachment inquiry without having spent a single minute discussing what conduct by a President rises to an impeachable offense

—this is the equivalent of a ship's captain leaving on a difficult, uncharted voyage hoping to find his or her compass somewhere along the way

—moreover, the entire process has now been started by a referral from an OIC who states that his role "is not to determine whether the President's actions warrant impeachment" but then proceeds to usurp the constitutional role of the House by concluding eleven reasons why it should do just that

—in this regard, the committee should compare the proceedings today and those 24 years ago; then Special Prosecutor Leon Jaworski wrote what has been called a "road map" of evidence that was neither accusatory nor conclusory; today, the Independent Counsel has written 445 pages of conclusions that read like an indictment; one more important difference to consider is that the "road map" written by Mr. Jaworski remains secret to this very day; Mr. Starr's referral and nearly 7000 pages of his evidence can be dialed up on the Internet

—were the committee to proceed as the Democratic members have been urging, to develop a shared understanding of what constitutes an impeachment offense, the committee might save time and resources because at the end of that consideration, the committee might find that none of these alleged offenses—no matter how they were originally named by the Independent Counsel or renamed by majority counsel—and all of which are based on the President's private relationship with Monica Lewinsky—would rise to the constitutional threshold

—without having what will be the committee's deliberations on the issue, the staff simply kept in mind the broadest and least forgiving possible definition of the Constitution's requirement of "high Crimes and Misdemeanors"; when we did we saw that:

—from the beginning, the framers said they had to involve "great and dangerous offenses to subvert the Constitution"—CHART (GEORGE MASON)

—or that, as Alexander Hamilton stated, they require there to be "injuries done immediately to society itself"—CHART (ALEXANDER HAMILTON)

—or as Republican Ranking Member Edward Hutchinson said when reviewing the conduct of President Nixon that the offenses had to be "high in the sense that they were crimes directed against or having great impact upon the system of government itself"—CHART (REP. HUTCHINSON)

—and even as the majority staff chose to rewrite the Starr referral, they, as we, had a ready reference point which they have apparently rejected; one of the lesser known offenses alleged against President Nixon, outside of the Watergate cover-up, was the that he had purposely and knowingly engaged in tax evasion, including allegations that there was back-dating of documents and a false filing under oath to the IRS

—with the Democrats in the majority and the Republican in the minority judging a Republican President, the committee voted 26 to 12 that these acts by the President, while perhaps constituting offenses, even criminal offenses, or even felonies, were not grounds for impeachment; the Democratic alternative, which tries to put the cart of establishing standards back behind the horse of evaluating evidence understands this basic question: if President Nixon's alleged lies to the IRS about his taxes were not grounds for impeachment in 1974, how then are alleged lies about President Clinton's private sexual relationship with Ms. Lewinsky grounds in 1998?

III. EVALUATION OF EVIDENCE: WHAT YOU SEE IS NOT ALWAYS WHAT YOU GET.

—the OIC's referral is composed of eleven separate charges; majority counsel already has seen fit to reject one or two of these and rename five or six others; but it is not the number of counts or grounds that matter, it is the underlying conduct; in the our law, there is a prosecutor's strategy which courts routinely disapprove by which they divide what they believe to be a single offense into many different charges; they do this to make a case look more serious or foreboding

—this is very much what the OIC has done and now what majority counsel has adopted as his approach; the OIC and majority counsel can take the same conduct by the President and with all the laws that exist on the books call them one offense, ten offenses, or a hundred offenses; that is what prosecutors do

—but no matter how many different grounds were sent by the Independent Counsel and no matter how majority counsel may further divide them up or rename them to pile on more charges, they all fit into just three distinct claims: (1) that the President lied under oath about the nature a sexual relationship with Monica Lewinsky, (2) that he committed obstruction when he sought others to help him conceal that inappropriate relationship; and (3) that he abused the Office of President by taking steps to hide that relationship—CHART (VARIOUS COUNTS)

—so no matter how majority staff may hope to strengthen their recommendation by finding new offenses to tag on, one basic allegation—the President was engaged in an improper relationship which he did not want disclosed—is the core charge that Mr. Starr suggest triggers this grave constitutional crisis

—some reasons that are offered to support an open-ended inquiry is that the evidence is dense, the evidence supports the charges, and those charges are serious; the minority staff's review suggests that the committee inquiry can be as expeditious as the Democrats propose because most of the evidence has already been obtained and, that evidence usually does not support the allegations that have been made

—time does not permit me to point out how each and every allegation of a offense stated by the OIC or now re-labeled by majority counsel is not as they contends it to be, and in interests of time I have but will not read out loud the citations to pages in the evidence, but I can take the most serious of the charges to demonstrate the serious gap between allegations and proof

—first, as to the allegations that the President lied under oath—whether you call in lying, false statements, perjury, or misprision

A. LYING UNDER OATH (COUNTS 1, 2, 3, 4, 8,)(MAJORITY COUNSEL'S 1, 5, 6, 7, 8, 12, AND 15)

—half the alleged grounds in the OIC referral and now [ ] grounds renamed or by sub-divided by majority counsel are that the President lied about his relationship with Monica Lewinsky

—it is not the actual lie about the relationship that rises to an impeachment offense; I suppose the OIC agrees that people lie about their improper relationships, but it is the fact that the lie occurred during a civil lawsuit or before the OIC's own grand jury that constitutes the offense

—Majority staff's approach, taking up where Ken Starr left off, would have the committee continue to delve into even more details concerning the physical relationship between the President and Ms. Lewinsky so that it could determine who was telling the truth about who touched who where; however, this unseemly process does not have to occur

—the better approach would be to take the OIC at its charge—if it was the fact that President Clinton lied at his Paula Jones deposition that creates the possibly impeachable offense, then the inquiry required would be to determine the importance or impact of that statement in that specific case; and this is what the evidence shows:

—these were misstatements about a consensual relationship made during a case alleging non-consensual harassment; when Judge Webber Wright of Arkansas ruled on January 29, 1998, that evidence about Ms. Lewinsky was "not essential to the core issues of the case", and when she then ruled on April 1 that no matter what the President did with any other woman, Ms. Jones herself had not proven that she had been harmed by what she alleged, the judge was giving the committee the ability to determine that the President's statements, whether truthful or not, were not of the legal importance suggested by Mr. Starr, let alone grave constitutional significance to support impeachment; and a prolonged inquiry is not required to see this context

—furthermore, the referral is quick to conclude that the President committed a serious offense by his interpretation of what did and did not constitute "sexual relations," in a definition invented for a deposition that is the type of gobbledygook that gives lawyers their bad name; but the committee will never read in his 445 page referral what the full evidence shows, that his definition just happened to be shared by Ms. Lewinsky herself

—in the transcript of her taped October 3, 1997, conversation with Linda Tripp, Ms. Lewinsky herself says that she was not having sex with the President because they did not have intercourse

—and even a Paula Jones' former attorney—after all it was her attorneys who created the strained definition—agreed in a television interview that the definition would not necessarily include oral sex

—no one has suggested that the President's answers, even given his explanation that he was trying to be "truthful, but not particularly helpful" in what he thought was a lawsuit being run by his political enemies, were not misleading, evasive, or technical—but seen in the entire context of the evidence they do not have the constitutional impact that the IC and majority counsel suggest

—some have raised the impeachment of judges, including Judge Nixon, for their having been convicted for perjury; but members here certainly know that the lies in those cases had to do with the discharge of those judge's duties and that the standards for impeaching judges, appointed for life, are not the same as for reversing presidential elections

—and, in this case, these were statements, the evidence shows the intent of which was to prevent the disclosure of an improper consensual relationship, not to interfere with allegations made by Paula Jones that she had been subject of unwanted harassment; to put the evidence another way: is there anyone involved in such an improper relationship who ever wanted it disclosed, and does any one believe that the President would have revealed his improper relationship with Ms. Lewinsky had the *Paula Jones* case not been pending at the time?

—since the answers are obvious, the inquiry is not on whether his statements were or were not truthful, but what were their context, impact, and subject matter; this too the committee can resolved expeditiously

—and as the committee considers the charges that the President lied under oath, or however they may be renamed by majority staff, remember that one example of why the OIC would have Congress trigger this inquiry is that the President stated

his relationship with Ms. Lewinsky started in 1996 when the OIC contends it started in late 1995; for the difference of these few months, a constitutional crisis is not warranted

IV. OBSTRUCTION OF JUSTICE (COUNTS 5, 6, 7, 9) (MAJORITY COUNSEL'S 2, 3, 4, 9,10,11, 13, 14)

—turning to the obstruction allegations, because of its reminiscence to the Watergate proceeding, the phrase "obstruction of justice" is the one which many have stated is the most egregious ground alleged in the Starr referral and why it was so emphasized by majority counsel who now splits the 4 into a total of 8

—but just as the committee cannot divorce the phrase "lying under oath" from the facts about which the President is alleged to have lied, so too it should not divorce the allegation of "obstruction", or whatever the majority staff now chooses to call it, from the actual evidence

—perhaps, the three widest quoted obstruction charges made by the OIC are that (1) the President initiated a return of the gifts he had sent Ms. Lewinsky so they would not be discovered in the *Paula Jones* case, (2) he tried to have Ms. Lewinsky submit a false affidavit, and (3) he sought to tamper with the testimony of Ms. Currie; all of these are undercut by the evidence

A. Gifts

—Mr. Starr's referral states, "Lewinsky and the President discussed the possibility of removing some gifts from her possession" referral at 166; majority counsel contends this to be a potential ground for impeachment and calls it [ ]"; certainly this would be a serious charge if true; the actual evidence, however, shows it is not true, no matter cast as the IC first did or as majority counsel wants to label it now

—read the actual testimony, and the committee will see that Ms. Lewinsky admits that she was the one who raised the gift issue with the President, not vice versa, and his response was not encouraging; he said "let me think about it" (*Lewinsky 8/6/98 GJ* at 152); this and his having already told her she would have to turn over whatever she had (*Clinton 8/17/98 GJ* at 44–47) hardly can support the charge of obstruction (or "misprison" or "conspiracy") as a criminal offense, let alone to justify the majority counsel's conclusion

—read further and the committee will see that, contrary to the OIC's conclusion that the President was worried about the gifts, he actually gave Ms. Lewinsky additional gifts after she expressed concern about them and after he knew they were subpoenaed; hardly the acts of a man set on obstruction

—finally, where the actual referral would indicate that it was the President or Ms. Currie who initiated the gift idea, Ms. Currie indicated that the idea came from Ms. Lewinsky (*Currie 1/27/98 GJ* at 57; *Currie 5/6/98 GJ* at 124); not satisfied with this answer that did not match the charge he wanted to make, the Independent Counsel then proposed to Ms. Currie that her memory differed from Ms. Lewinsky; when Ms. Currie said that might be the case, that one word "might" was all the IC needed to make his charge (*Referral* at 167); but read in its entirety, Ms. Currie's testimony is clear, and no leading question or quotation out of context can change the one important thing about her testimony—the President did not ask her to call for or retrieve the gifts

B. Affidavit

—the OIC charges (Referral at 173) and the majority counsel would argue (as "misprision") that more inquiry is needed because the evidence is that the President sought Ms. Lewinsky to submit a false affidavit in the Jones case—a serious charge which, again, is not contained in the evidence

—there is no doubt that the President and Ms. Lewinsky discussed an affidavit and no doubt that neither wanted her to have to testify in a case concerning sexual harassment about what was their improper, but entirely consensual relationship (the way Ms. Lewinsky put it was that it was "a personal one and none of Paula Jones' business"—*Lewinsky 8/1/98302* at 10); wanting an affidavit to avoid this consensual relationship from being exposed and seeking a false affidavit are not the same, even though the Starr referral jumps right over the difference

—as to the only facts that would matter, both the President and Ms. Lewinsky agree that he never asked her to file a false affidavit (*Clinton GJ 8/17/98* at 70; *Lewinsky 7/27/98302* at 12) and that the President did not even want to see the affidavit (*Lewinsky 8/2/98302* at 3)

—and even though the OIC tries to enhance his charge that the President sought Ms. Lewinsky to lie by "assisting her job search to 'keep her on the team'" (*Referral* at 185), hasn't everyone now seen that the job search began by others than the President long before the *Jones* case issue arose, that it was started to remove Ms.

Lewinsky from the White House before the election, that Linda Tripp, not the President, suggested getting Vernon Jordan involved (*Lewinsky 8/20/98 GJ* at 23; *Currie 5/6/98 GJ* at 176; *Jordan 3/3/98 GJ* at 65), that Ms. Currie pushed getting her friend a job because she felt badly about Ms. Lewinsky had been transferred (*Currie 5/6/98 GJ* at 45) and, finally, that Ms. Lewinsky, even though never asked by the IC, made sure she did not finish her testimony before stating that "no one asked me to lie and I was never promised a job for my silence" (*Lewinsky 7/27/98 GJ* at 302)

—and note this, despite the Independent Counsel having room in his report for pages and pages of unnecessary specifics quoting directly from Ms. Lewinsky about where, when, and how she touched the President, he could not find the space in his 445 page referral to quote her exact, uncompromising, clear, and completely dispositive words on this key issue

C. Betty Currie's Testimony

—while the charge (OIC calls it "obstruction"; so does majority counsel) has been made that the President was trying to tamper with the testimony of Betty Currie, you can look through the 445 page referral and never see the Independent Counsel advise you that Ms. Currie was not listed to be deposed and was not on the witness list in the *Jones* case or that the President obviously did not know about Linda Tripp having come to the OIC to start the investigation; Ms. Currie, then, was not a "witness" who could have been tampered with

—what the full transcripts of Ms. Currie, the President, and the White House staff and reference to the time frame of January 18 do show is that the President's worry was not Ms. Currie being a witness, but was the fact that the questions and answers at the deposition were going to be leaked to the press and create a media eruption; the evidence shows this was exactly his motive because within just a few hours of his testimony, the Lewinsky questions and answers were on the Internet and the subject of the Sunday news shows (*Clinton 8/17/98 GJ* at 81)

—and while the IC [and Mr. majority counsel] contend that the President sought to direct her what to say (*Referral* at 191–92), Ms. Currie says just the opposite; her being called back and back and back to the IC grand jury; and her now being called before this committee and asked the question again and again and again did not then and would not now change the facts (*Currie 7/22/98 GJ* at 22–3)

V. ABUSE OF POWER (COUNTS 10 AND 11)

—Members of the committee, Counts 10 and 11 are in many ways the most illustrative of the OIC referral and must be seen to undermine his entire referral

—not content with charging lying under oath, witness tampering, and obstruction of justice about the President's attempt to hide his private relationship, the Independent Counsel has asked the committee to re-cast these same allegations as an abuse of office, just as majority counsel wants to rename charges as well

—the term "abuse of office" does invoke the memory of President Nixon's wrongdoing; but the clothes of Watergate do fit the body of the conduct detailed in this referral

—in effect, Grounds 10 and 11 charge that the President lied to his staff or to the people around him about the same inappropriate relationship with Ms. Lewinsky, knowing that they might repeat those misstatements, and that the President violated his oath of office because he and his attorneys tried to protect his constitutional rights by asserting privileges of law—including executive privilege and the attorney client privilege—given to Presidents and all Americans—during the course of the IC's four-year, $40 million inquiry

—even majority counsel did not take long to dismiss these ideas, as his charges do not include this odd notion of "abuse of office" and I assume will not now be pursued by the majority

—as to the misstatements to the staff that might be repeated in the grand jury or even to the public, the referral continues to divide the charge from what the statement was about; this was not an attempt by a President to organize his staff to spread misinformation about the progress of the war in Vietnam, or about a break-in of the Democratic Headquarters at the Watergate, or even about how funds from arms sales in Iran were diverted to aid the Contras in Nicaragua; this was a President repeating to his staff the same denial of an inappropriate and extremely embarrassing relationship that he had already denied to the public directly; however wrong the relationship or misleading the denial, it is not nearly the same as those other examples and cannot stand on the same constitutional footing

—and as to the ground for impeachment that the President had the audacity to assert privileges in litigation, it is literally shocking that the Independent Counsel,

himself a former appellate judge and chief lawyer for the United States before the Supreme Court, would even suggest that the assertion of an evidentiary privilege by the President, on the advice of his lawyers and the White House counsel, that was found to exist by the judge in question could ever, under any circumstances, be the grounds for an impeachment

—I have heard the Independent Counsel say, as majority counsel did too, that a President should not be above the law, and yet the referral would place him below the law that gives every American the right to assert legally accepted privileges without fearing being thrown out of their job

—so if these were so easily dismissed by majority staff, why would the Independent Counsel suggest these almost frivolous grounds?

VI. PROSECUTORIAL EXCESS: WHY IS THE EVIDENCE OFTEN NOT WHAT IT IS PURPORTED TO BE?

—as committee decides the scope of its work, one other issue should be included that may answer this question; we have pointed to just some of the times when the Independent Counsel makes a statement not supported by the evidence he sent or jumps to a guilty inference when a more innocent explanation was more obvious

—a full and fair inquiry should therefore consider whether numerous actions by the OIC undermine his claim to impartiality and fairness; considering this would not be an attempt to divert attention from the President's conduct or for delay

—excesses by the Independent Counsel are not, as some have contended "incidental" or "tangential"; how does the committee know this, the Independent Counsel said so himself

—when Ms. Lewinsky's testimony was released by the committee it was Mr. Starr himself who wrote the committee on 9/25/98: "At the time we submitted our referral we viewed . . . questions [about his conduct] as incidental and tangential. . . . the issue has now been raised publicly and appears to bear on the substantiality and credibility of the information we provided to the House"

—we agree with the Independent Counsel that his conduct bears on the "substantiality" and "credibility" of the information he gathered and transmitted; consequently, on the Independent Counsel's own invitation, this too should be the subject of the committee's review: (CHART—PROSECUTOR EXCESS)

—first, after 4 years of investigation, the part of the case which has caused this impeachment referral was the Lewinsky matter; however, it is not clear whether the Independent Counsel jumped the gun on getting into this area based on the exaggerated and perhaps even manipulated statements of Linda Tripp; it may have begun its dealings with Ms. Tripp earlier that it said, it accepted Tripp's apparently unlawfully-obtained tapes and then wired her to trap Ms. Lewinsky before it was given authority to even get involved in these matters

—second, once it got involved, its dealings: with Ms Lewinsky when they detained her for 10 hours despite her asking for her lawyer, with her mother who was brought to tears by their conduct, with Ms. Currie who they returned to the grand jury again and again with leading and suggestive questions, and with other witnesses, all raise the issue of the quality of the evidence that they then obtained and have now used as the foundation for their referral; because as the weight of the evidence diminishes, so must the conclusions that the OIC and majority staff say flows from that evidence

—finally, if the committee compares the charges and main points of evidence from the 445 page referral with the news stories that appeared between January and August, it will confirm that not one charge, not one allegation, and not one piece of evidence—from the Tripp tapes to the stained dress—was not leaked to the press; the OIC has been asked to show cause why it should not be held in contempt for leaking, and the outcome of that determination, as Mr. Starr's invitation would agree, bears on the substantiality and credibility of evidence; in that same vein consider this—when the referral was finally delivered to the House on September 9 and locked in a secure room, in a matter of minutes, the media reported on how many pages and how many counts it contained; certainly the committee knows that that information could not have come from Capitol Hill, where the boxes remained under seal

VI. CONCLUSION

—Members of the committee for only the third time in the 200 year history of our country has an impeachment process been invoked; as members on both sides of the aisle have said, this is not a step that should be taken lightly and one, as Democratic members have argued, that should not lead to a fishing expedition to find something better than that which was sent by the referral itself

—the staff has been asked to make a preliminary evaluation of the charges and evidence; this preliminary review indicates that the charges are often overstated, based on strained definitions of what is an offense under the law, are often not supported by the actual evidence in the boxes sent, and are sometimes (as with the last two suggested Grounds) the product of zeal to make a case rather than to state the law

—as minority staff, we have fewer resources than our counter-parts, just as the majority has more votes than the minority to pass whatever inquiry it believes is right; but it should be the weight of the evidence and not the number of votes that matter

—Congresswoman Lofgren provided the staff with some history to read; in one piece Alexander Hamilton was called upon to explain the impeachment process to the people being asked to adopt the Constitution, he stated:

> Prosecutions of impeachment "will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases, it will connect itself with the pre-existing factions, . . . and, in such cases, there will always be the danger that the decision will be regulated more by the comparative strength of the parties than by real demonstrations of innocence and guilt. *Federalist No. 65* at 424.

—as the committee considers the version of events the Independent Counsel suggests might rise to impeachable offenses and then decides between the two alternative resolutions being presented, Hamilton's words seem particularly germane

—thank you for indulging me the time and I would be happy to answer any questions

Mr. HYDE. I have a resolution at the desk which all members have before them and which the Clerk will read.

The Clerk read the resolution, as follows:

[The information follows:]

105TH CONGRESS

2D SESSION

H. RES. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. HYDE submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

SEC. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information;

as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or